

# Exhibit 5

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
No. 10 Civ. 9308 (JSR)

-----X

BURTON T. FRIED,

Plaintiff,

- against -

LVI SERVICES, INC., LVI PARENT CORP., CODE  
HENNESSY SIMMONS, LLC d/b/a CHS PRIVATE  
EQUITY V LP; APOLLO INVESTMENT CORP.,  
SCOTT E. STATE, in his official and  
individual capacities; BRIAN SIMMONS, in  
his official and individual capacities;  
RAJAY BAGARIA, in his official and  
individual capacities; GERALD J. GIRARDI,  
in his official and individual capacities,  
Defendants.

-----X

May 23, 2011  
2:39 p.m.

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212-267-6868

516-608-2400

<p style="text-align: right;">Page 2</p> <p>1 2 3 4 VIDEOTAPE DEPOSITION of GERALD 5 GIRARDI, taken by the Plaintiff, pursuant 6 to Notice, held at the offices of Thompson 7 Wigdor &amp; Gilly, LLP, 85 Fifth Avenue, New 8 York, New York, before Debbie Zaromatidis, 9 a Shorthand Reporter and Notary Public of 10 the State of New York. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 2 S T I P U L A T I O N S 3 4 IT IS HEREBY STIPULATED AND 5 AGREED by and between the Attorneys for 6 the respective parties hereto that filing 7 and sealing be and the same are hereby 8 waived. 9 IT IS FURTHER STIPULATED AND 10 AGREED that all objections except as to 11 the form of the question, shall be 12 reserved to the time of the trial. 13 IT IS FURTHER STIPULATED AND 14 AGREED that the within examination may be 15 signed and sworn to before any notary 16 public with the same force and effect as 17 though signed and sworn to before this 18 Court. 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 3</p> <p>1 2 A P P E A R A N C E S : 3 4 THOMPSON WIGDOR &amp; GILLY, LLP 5 Attorneys for Plaintiff 6 85 Fifth Avenue 7 New York, New York 10003 8 BY: SHAFFIN A. DATOO, ESQ. 9 MATTHEW GORMAN, ESQ. 10 11 SIDLEY AUSTIN, LLP 12 Attorneys for Defendants 13 787 Seventh Avenue 14 New York, New York 10019 15 BY: JOANNE SELTZER, ESQ. 16 17 18 ALSO PRESENT: 19 BURTON FRIED 20 J.D. MARTINEZ, Videographer 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 2 THE VIDEOGRAPHER: We are on 02:39:00 3 the record. My name is J.D. Martinez of 02:39:00 4 Veritext New York. The date today is May 02:39:04 5 23, 2011. The time on the video monitor 02:39:05 6 is 2:39 p.m. This deposition is being 02:39:09 7 held at the offices of Thompson Widjor &amp; 02:39:13 8 Gilly, LLP located at 85 Fifth Avenue, New 02:39:17 9 York, New York. 02:39:20 10 The caption of this case is 02:39:20 11 Burton T. Fried versus LVI Services, Inc., 02:39:22 12 et al., filed in the United States 02:39:27 13 District Court, Southern District of New 02:39:29 14 York. The name of the witness is Gerald 02:39:31 15 Girardi. 02:39:33 16 At this time the attorneys will 02:39:34 17 identify themselves and the parties they 02:39:35 18 represent after which our court reporter, 02:39:38 19 Debbie, will swear in the witness. 02:39:41 20 MS. SELTZER: Joanne Seltzer 02:39:41 21 for Sidley Austin, LLP representing the 02:39:42 22 defendants. 02:39:45 23 MR. DATOO: Shaffin Dato for 02:39:47 24 Thompson Wigdor &amp; Gilly representing the 02:39:47 25 plaintiff Burton T. Fried. 02:39:48</p>

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<p>1 GIRARDI</p> <p>2 GERALD J. GIRARDI, 02:39:50</p> <p>3 having first been duly sworn by a Notary 02:39:50</p> <p>4 Public of the State of New York, was 02:39:50</p> <p>5 examined and testified as follows: 02:39:50</p> <p>6 EXAMINATION BY MR. DATOO: 02:39:58</p> <p>7 Q. Good afternoon, Mr. Girardi. As 02:39:58</p> <p>8 I just mentioned, my name is Shaffin 02:40:01</p> <p>9 Dato. To my left is my colleague Matthew 02:40:04</p> <p>10 Gorman. We represent Mr. Fried in this 02:40:07</p> <p>11 matter. 02:40:09</p> <p>12 I am going to ask you a bunch of 02:40:09</p> <p>13 questions today, and if your attorney does 02:40:12</p> <p>14 not direct you not to answer, hopefully 02:40:15</p> <p>15 you can answer all of them today. 02:40:19</p> <p>16 I am going to start off with 02:40:21</p> <p>17 some preliminary questions. Is your 02:40:23</p> <p>18 ability to tell the truth in any way 02:40:25</p> <p>19 impaired today? 02:40:26</p> <p>20 A. No. 02:40:27</p> <p>21 Q. Do you understand that the 02:40:27</p> <p>22 answers you are about to give are under 02:40:28</p> <p>23 oath? 02:40:31</p> <p>24 A. Yes. 02:40:31</p> <p>25 Q. And that you are subject to 02:40:31</p>	<p>1 GIRARDI</p> <p>2 Q. Do you have any -- do you have a 02:41:16</p> <p>3 personal e-mail account? 02:41:18</p> <p>4 A. I do. 02:41:19</p> <p>5 Q. Did you look in your personal 02:41:19</p> <p>6 e-mail account for any documents? 02:41:21</p> <p>7 A. There would be no LVI files in 02:41:22</p> <p>8 my personal e-mail account. I -- I didn't 02:41:25</p> <p>9 look in them -- in my personal e-mail 02:41:29</p> <p>10 account. 02:41:31</p> <p>11 Q. Did you review any documents you 02:41:31</p> <p>12 had at home? 02:41:34</p> <p>13 A. No. I -- LVI documents may have 02:41:35</p> <p>14 been sent to my personal e-mail account, 02:41:38</p> <p>15 loan documents, things of that nature, 02:41:42</p> <p>16 and -- but in terms of this deposition 02:41:44</p> <p>17 they are all on my work e-mail account 02:41:47</p> <p>18 because I send it from my Blackberry. 02:41:50</p> <p>19 Q. Have you ever been sued before? 02:41:55</p> <p>20 A. No. 02:41:56</p> <p>21 Q. Other than this lawsuit, has 02:41:56</p> <p>22 anyone ever accused you of discrimination? 02:41:57</p> <p>23 A. No. 02:41:59</p> <p>24 Q. Have you ever given any sworn 02:42:00</p> <p>25 testimony before? 02:42:03</p>
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<p>1 GIRARDI</p> <p>2 penalties of perjury if you give an 02:40:33</p> <p>3 untruthful answer? 02:40:36</p> <p>4 A. Yes. 02:40:37</p> <p>5 Q. I am going to assume that if you 02:40:38</p> <p>6 answer a question that you understood it. 02:40:39</p> <p>7 If you don't understand a question, let me 02:40:40</p> <p>8 know, and I will ask the question a 02:40:42</p> <p>9 different way. Please give verbal answers 02:40:44</p> <p>10 to my questions. If you nod your head or 02:40:45</p> <p>11 shake it, the video will be able to pick 02:40:48</p> <p>12 it up, but the court reporter won't. 02:40:51</p> <p>13 A. Okay. 02:40:54</p> <p>14 Q. If you need a break, let me 02:40:54</p> <p>15 know. The only condition I have is that 02:40:56</p> <p>16 you answer the last question asked. 02:40:58</p> <p>17 A. Okay. 02:40:59</p> <p>18 Q. Now, in connection with this 02:41:00</p> <p>19 lawsuit, did you provide your attorneys 02:41:02</p> <p>20 with all responsive documents? 02:41:04</p> <p>21 A. Yes. 02:41:05</p> <p>22 Q. And where did you look to find 02:41:06</p> <p>23 these documents? 02:41:07</p> <p>24 A. In Apollo's files electronic and 02:41:08</p> <p>25 physical. 02:41:16</p>	<p>1 GIRARDI</p> <p>2 A. No. 02:42:03</p> <p>3 Q. Did you do anything to prepare 02:42:05</p> <p>4 for this deposition? 02:42:10</p> <p>5 A. I met with my attorney. 02:42:11</p> <p>6 Q. How many times? 02:42:13</p> <p>7 A. We met once last week. 02:42:14</p> <p>8 Q. And for how long? 02:42:18</p> <p>9 A. A couple of hours. 02:42:19</p> <p>10 Q. And did you review any documents 02:42:20</p> <p>11 in preparing for this deposition? 02:42:22</p> <p>12 A. Yes, we did. 02:42:23</p> <p>13 Q. How many approximately? 02:42:24</p> <p>14 A. We had a binder full of 02:42:26</p> <p>15 documents that are probably 40, 50 tabs in 02:42:29</p> <p>16 it. 40 tabs of information. 02:42:32</p> <p>17 Q. And did you read Mr. Fried's 02:42:35</p> <p>18 deposition transcript prior to testifying 02:42:37</p> <p>19 today? 02:42:39</p> <p>20 A. I did not read his deposition 02:42:39</p> <p>21 transcript, no. 02:42:41</p> <p>22 Q. Did you read any excerpts or 02:42:42</p> <p>23 summaries from his deposition transcript? 02:42:44</p> <p>24 A. No. 02:42:47</p> <p>25 Q. Mr. Girardi, how old are you? 02:42:47</p>

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<p>1 GIRARDI</p> <p>2 A. Fifty-one. 02:42:49</p> <p>3 Q. And what is your date of birth? 02:42:50</p> <p>4 A. 10/8/59. 02:42:52</p> <p>5 Q. And do you know the plaintiff in 02:42:54</p> <p>6 this lawsuit, Mr. Fried? 02:43:02</p> <p>7 A. Yes, I do. 02:43:03</p> <p>8 Q. How so? 02:43:04</p> <p>9 A. Professionally from our 02:43:05</p> <p>10 investment in LVI. 02:43:07</p> <p>11 Q. When you say our, do you mean 02:43:08</p> <p>12 Apollo? 02:43:09</p> <p>13 A. Apollo, yes. 02:43:10</p> <p>14 Q. And do you know how old Mr. 02:43:11</p> <p>15 Fried is? 02:43:13</p> <p>16 A. I know from reading his 02:43:13</p> <p>17 complaint that he is 70. 02:43:15</p> <p>18 Q. Okay. Prior to reading his 02:43:16</p> <p>19 complaint -- 02:43:18</p> <p>20 A. I had no idea how old he was. 02:43:18</p> <p>21 Q. How old did you think he was? 02:43:20</p> <p>22 A. I figured he was older than me. 02:43:23</p> <p>23 Q. How much older? 02:43:24</p> <p>24 MS. SELTZER: Objection. You 02:43:26</p> <p>25 can answer. 02:43:27</p>	<p>1 GIRARDI</p> <p>2 Q. And where do you work? 02:44:13</p> <p>3 A. For Apollo Investment Corp. 02:44:15</p> <p>4 Q. And how long have you worked 02:44:17</p> <p>5 there? 02:44:18</p> <p>6 A. I have been there for just over 02:44:18</p> <p>7 three years. 02:44:21</p> <p>8 Q. And where were you prior to 02:44:21</p> <p>9 Apollo? 02:44:23</p> <p>10 A. CIBC. 02:44:23</p> <p>11 Q. And do you work in the New York 02:44:26</p> <p>12 office of Apollo? 02:44:29</p> <p>13 A. I work in the New York office, 02:44:30</p> <p>14 yes. 02:44:32</p> <p>15 Q. And what is your current job 02:44:32</p> <p>16 title at Apollo? 02:44:34</p> <p>17 A. Principal. 02:44:35</p> <p>18 Q. And how long have you held that 02:44:41</p> <p>19 title? 02:44:42</p> <p>20 A. Three years. 02:44:42</p> <p>21 Q. And what are your job duties? 02:44:43</p> <p>22 A. I work for our mezzanine debt 02:44:45</p> <p>23 fund. My primary responsibility is to 02:44:49</p> <p>24 work on problem credits, workouts, and 02:44:51</p> <p>25 restructuring. 02:44:53</p>
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<p>1 GIRARDI</p> <p>2 A. I had no idea to be honest with 02:43:27</p> <p>3 you. 02:43:30</p> <p>4 Q. Okay. In 2010, November of 2010 02:43:30</p> <p>5 what company did Mr. Fried work for? 02:43:33</p> <p>6 A. He worked for LVI as far as I 02:43:35</p> <p>7 know. 02:43:39</p> <p>8 Q. LVI Parent or LVI Services? 02:43:39</p> <p>9 A. The distinction isn't that 02:43:45</p> <p>10 important to me frankly. We were an 02:43:47</p> <p>11 investor in LVI Services. I felt he was 02:43:48</p> <p>12 an employee of LVI Services. If he was an 02:43:51</p> <p>13 employee of the Parent, I honestly don't 02:43:55</p> <p>14 know. 02:43:57</p> <p>15 Q. Do you know what his job title 02:43:57</p> <p>16 was? 02:43:58</p> <p>17 A. He was the interim CEO up until 02:43:59</p> <p>18 the restructuring. Then he was going to 02:44:02</p> <p>19 be the chairman of the board of the 02:44:06</p> <p>20 company. 02:44:07</p> <p>21 Q. Okay. And are you currently 02:44:07</p> <p>22 employed? 02:44:11</p> <p>23 A. I am. 02:44:11</p> <p>24 Q. Full time? 02:44:12</p> <p>25 A. Yes, I am. 02:44:13</p>	<p>1 GIRARDI</p> <p>2 Q. Now, are you familiar with a 02:44:54</p> <p>3 company called LVI Parent Corp.? 02:44:55</p> <p>4 A. I -- yes. 02:44:57</p> <p>5 Q. How so? 02:44:59</p> <p>6 A. It's the parent corp. of LVI 02:44:59</p> <p>7 Services. Again, the distinction is not 02:45:03</p> <p>8 that important to me. 02:45:05</p> <p>9 Q. It is to me, so I am -- 02:45:07</p> <p>10 A. Okay. 02:45:09</p> <p>11 Q. -- asking you questions -- 02:45:10</p> <p>12 A. Sure. 02:45:11</p> <p>13 Q. -- about specific LVI entities. 02:45:12</p> <p>14 What does LVI Parent do? 02:45:14</p> <p>15 A. Nothing that I am aware of. 02:45:16</p> <p>16 Q. Is it a holding company? 02:45:19</p> <p>17 A. I believe so, but I am not a 02:45:23</p> <p>18 hundred percent sure. 02:45:24</p> <p>19 Q. Who owns LVI Parent? 02:45:25</p> <p>20 A. Today I believe our investment 02:45:27</p> <p>21 is at the LVI Parent level, although I 02:45:30</p> <p>22 have to go back and refer to documents to 02:45:34</p> <p>23 make sure, but I -- I couldn't say for 02:45:35</p> <p>24 sure. 02:45:37</p> <p>25 Q. Are you saying that Apollo is an 02:45:38</p>

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<p style="text-align: right;">Page 18</p> <p>1 GIRARDI</p> <p>2 new lines of business, and things of that 02:49:24</p> <p>3 nature primarily. 02:49:28</p> <p>4 Q. How about personnel decisions? 02:49:29</p> <p>5 A. At a certain level based on our 02:49:31</p> <p>6 investment agreement, yes, certain 02:49:34</p> <p>7 personnel decisions are undertaken by the 02:49:36</p> <p>8 board. 02:49:38</p> <p>9 Q. And what level? 02:49:38</p> <p>10 A. I believe it is a handful of the 02:49:39</p> <p>11 executives. 02:49:41</p> <p>12 Q. Is -- would the chairman be one 02:49:42</p> <p>13 of those executives? 02:49:44</p> <p>14 A. I believe in our investment 02:49:45</p> <p>15 agreement there is -- the chairman was one 02:49:47</p> <p>16 of the decisions that was at the board 02:49:51</p> <p>17 level, yes. 02:49:53</p> <p>18 Q. Okay. What is LVI Acquisition 02:49:54</p> <p>19 Corp.? 02:49:58</p> <p>20 A. Again, the distinction isn't 02:49:58</p> <p>21 that important to me. It was an 02:50:01</p> <p>22 intermediate holding company that was 02:50:04</p> <p>23 formed I believe when the original 02:50:05</p> <p>24 acquisition from Code was made in 2005. 02:50:08</p> <p>25 Q. Does LVI Parent have any 02:50:13</p>	<p style="text-align: right;">Page 20</p> <p>1 GIRARDI</p> <p>2 Q. Of LVI Parent? 02:51:03</p> <p>3 A. I -- I will assume it is, but I 02:51:04</p> <p>4 am not a hundred percent sure. 02:51:08</p> <p>5 Q. Okay. And what does LVI 02:51:09</p> <p>6 Services do? 02:51:11</p> <p>7 A. Remediation and demolition 02:51:12</p> <p>8 services primarily as well as emergency 02:51:15</p> <p>9 response business. 02:51:18</p> <p>10 Q. And do you -- do you know the 02:51:19</p> <p>11 relationship between LVI Parent and LVI 02:51:22</p> <p>12 Services or whichever company is the 02:51:26</p> <p>13 parent of LVI Services? 02:51:27</p> <p>14 A. I am not sure I understand the 02:51:29</p> <p>15 question. 02:51:30</p> <p>16 Q. Do you know -- is there a 02:51:31</p> <p>17 relationship between the parent company of 02:51:32</p> <p>18 LVI Services and LVI Services? 02:51:35</p> <p>19 A. I assume there is, yes. 02:51:37</p> <p>20 Q. Do you know what that 02:51:39</p> <p>21 relationship is? 02:51:40</p> <p>22 A. There is a parent holding 02:51:41</p> <p>23 company and an operating company. 02:51:43</p> <p>24 Q. Okay. When were you appointed 02:51:45</p> <p>25 to the board of directors? 02:51:50</p>
<p style="text-align: right;">Page 19</p> <p>1 GIRARDI</p> <p>2 employees? 02:50:15</p> <p>3 A. I am not sure. 02:50:15</p> <p>4 Q. Does LVI Parent have any 02:50:18</p> <p>5 officers? 02:50:21</p> <p>6 A. I am not sure. 02:50:21</p> <p>7 Q. Does LVI Parent own any assets? 02:50:24</p> <p>8 A. I don't really know. 02:50:26</p> <p>9 Q. Does LVI Parent have any 02:50:29</p> <p>10 offices? 02:50:31</p> <p>11 A. I don't believe so. I don't 02:50:32</p> <p>12 know. 02:50:35</p> <p>13 Q. Where is LVI Parent 02:50:36</p> <p>14 headquartered? 02:50:39</p> <p>15 A. LVI is headquartered in New 02:50:40</p> <p>16 York. I am not sure if LVI Parent shares 02:50:43</p> <p>17 the same offices. 02:50:45</p> <p>18 Q. Okay. Does LVI Parent have any 02:50:46</p> <p>19 subsidiaries? 02:50:49</p> <p>20 A. I assume that they do, 02:50:50</p> <p>21 but -- LVI Services being one. I couldn't 02:50:53</p> <p>22 tell you the others. 02:50:55</p> <p>23 Q. Do you know if LVI Services is a 02:50:56</p> <p>24 wholly-owned subsidiary? 02:51:00</p> <p>25 A. I believe it is. 02:51:02</p>	<p style="text-align: right;">Page 21</p> <p>1 GIRARDI</p> <p>2 A. October 8 when the deal closed. 02:51:51</p> <p>3 October 8, 2010 when the transaction 02:51:54</p> <p>4 closed when we became an owner. 02:51:56</p> <p>5 Q. Now, prior to your appointment 02:51:58</p> <p>6 to the board, were you involved in any way 02:52:01</p> <p>7 with LVI Parent or LVI Services? 02:52:02</p> <p>8 A. We were an investor, and so we 02:52:05</p> <p>9 were involved as an investor. Yes. 02:52:07</p> <p>10 Q. And can you give me examples of 02:52:09</p> <p>11 how investors would be involved or how you 02:52:11</p> <p>12 were involved as an investor? 02:52:14</p> <p>13 A. As a mezzanine investor we 02:52:15</p> <p>14 attended board meetings as observers, so 02:52:18</p> <p>15 we were allowed to sit in on board 02:52:21</p> <p>16 meetings and listen to what was discussed. 02:52:23</p> <p>17 We didn't have a vote. We were there 02:52:26</p> <p>18 purely to observe, and, you know, as any 02:52:28</p> <p>19 investor we would follow up with 02:52:31</p> <p>20 questions. We would discuss how the 02:52:33</p> <p>21 business was doing periodically with the 02:52:38</p> <p>22 management team, mainly the CFO Paul 02:52:41</p> <p>23 Cutrone. 02:52:43</p> <p>24 Q. And when did you start sitting 02:52:44</p> <p>25 in on these board meetings? 02:52:45</p>

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<p>1 GIRARDI</p> <p>2 that is still -- if that is still the 02:56:00</p> <p>3 -- the fact, then, yes, they would have a 02:56:04</p> <p>4 Milford and a Westport office. 02:56:07</p> <p>5 Q. And do you know if there are any 02:56:09</p> <p>6 employees working out of the Westport 02:56:11</p> <p>7 office currently? 02:56:13</p> <p>8 A. I'm not sure. 02:56:14</p> <p>9 Q. Now, prior to 2006, do you know 02:56:15</p> <p>10 what Mr. Fried's job title at LVI Services 02:56:17</p> <p>11 was? 02:56:20</p> <p>12 A. Prior to 2006? 02:56:21</p> <p>13 Q. Yes. 02:56:22</p> <p>14 A. In 2005 I believe Burt was the 02:56:23</p> <p>15 CEO. 02:56:29</p> <p>16 Q. Okay. And do you know how long 02:56:30</p> <p>17 he was CEO for? 02:56:32</p> <p>18 A. No. 02:56:33</p> <p>19 Q. And do you know what his job 02:56:34</p> <p>20 duties were as CEO? 02:56:35</p> <p>21 A. No. 02:56:37</p> <p>22 Q. Do you know what his work 02:56:38</p> <p>23 performance was like as CEO? 02:56:39</p> <p>24 A. No. 02:56:41</p> <p>25 Q. Now, during the time he was CEO, 02:56:42</p>	<p>1 GIRARDI</p> <p>2 A. When? 02:57:56</p> <p>3 Q. Yes. 02:57:57</p> <p>4 A. I don't remember the exact date, 02:57:57</p> <p>5 no. 02:57:59</p> <p>6 Q. Okay. And do you know how long 02:57:59</p> <p>7 Mr. McNamara was CEO of LVI Services? 02:58:01</p> <p>8 A. From sometime in 2006 until 02:58:04</p> <p>9 March or April of 2010. 02:58:07</p> <p>10 Q. Okay. And during the time that 02:58:09</p> <p>11 Mr. McNamara was CEO, do you know what Mr. 02:58:11</p> <p>12 Fried's job title was? 02:58:15</p> <p>13 A. I believe he was chairman. 02:58:17</p> <p>14 Q. Chairman of the board or 02:58:19</p> <p>15 chairman at LVI Services? 02:58:23</p> <p>16 A. I believe he was the chairman of 02:58:25</p> <p>17 the board of LVI. Again, whether it was 02:58:27</p> <p>18 LVI Services or Parent, that distinction 02:58:29</p> <p>19 can't -- I can't testify to that. 02:58:32</p> <p>20 Q. Was he also an employee of LVI 02:58:34</p> <p>21 Services? 02:58:37</p> <p>22 A. I'm not sure. 02:58:37</p> <p>23 Q. How often did you interact with 02:58:38</p> <p>24 Mr. Fried while he was chairman? 02:58:43</p> <p>25 A. Infrequently. 02:58:45</p>
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<p>1 GIRARDI</p> <p>2 do you know how LVI Services was doing 02:56:48</p> <p>3 financially? 02:56:50</p> <p>4 MS. SELTZER: I object to the 02:56:52</p> <p>5 form, but you can answer. 02:56:52</p> <p>6 A. Up until 2005 the company had 02:56:54</p> <p>7 been performing well. That is the time 02:56:58</p> <p>8 that -- that was at the time of the Code 02:57:00</p> <p>9 Hennessy buyout. Burt was replaced as CEO 02:57:04</p> <p>10 in 2006 by Bob McNamara. In early 2006, 02:57:06</p> <p>11 up until the time McNamara came on board 02:57:13</p> <p>12 the company began to underperform, and it 02:57:16</p> <p>13 has continued to underperform ever since. 02:57:21</p> <p>14 Q. To this date? 02:57:23</p> <p>15 A. Yes. 02:57:23</p> <p>16 Q. Now, you testified that Mr. 02:57:24</p> <p>17 McNamara became CEO in 2006, correct? 02:57:34</p> <p>18 A. Sometime in 2006. Right. 02:57:37</p> <p>19 Q. Okay. Do you know why he became 02:57:39</p> <p>20 the CEO of LVI Services? 02:57:42</p> <p>21 MS. SELTZER: I object to the 02:57:44</p> <p>22 form. 02:57:45</p> <p>23 A. No. 02:57:46</p> <p>24 Q. And do you know when he became 02:57:48</p> <p>25 CEO? 02:57:56</p>	<p>1 GIRARDI</p> <p>2 Q. How often would that be? 02:58:46</p> <p>3 A. At -- 02:58:49</p> <p>4 Q. How infrequent -- 02:58:50</p> <p>5 A. At the board meetings primarily. 02:58:52</p> <p>6 Q. So about four times a year? 02:58:54</p> <p>7 A. Probably. 02:58:56</p> <p>8 Q. And do you know what Mr. Fried's 02:58:56</p> <p>9 job duties were during the time that he 02:58:58</p> <p>10 was chairman while Mr. McNamara was the 02:58:59</p> <p>11 CEO? 02:59:02</p> <p>12 A. No. 02:59:02</p> <p>13 Q. Now, while Mr. Fried was the 02:59:03</p> <p>14 chairman and Mr. McNamara was the CEO, do 02:59:11</p> <p>15 you have any knowledge about the quality 02:59:18</p> <p>16 of his work performance? 02:59:19</p> <p>17 A. As measured by -- in what terms? 02:59:21</p> <p>18 Q. Was he doing a good job? 02:59:26</p> <p>19 A. The company performed miserably, 02:59:28</p> <p>20 so I would have to assume that he wasn't 02:59:31</p> <p>21 doing a good job. 02:59:34</p> <p>22 Q. Why would you say assume that? 02:59:34</p> <p>23 A. Because the company performed 02:59:36</p> <p>24 terribly and we ultimately had to 02:59:38</p> <p>25 restructure it, so I would assume that the 02:59:40</p>

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<p>1 GIRARDI</p> <p>2 entire management team underperformed 02:59:42</p> <p>3 including Burt during that time. 02:59:44</p> <p>4 Q. Well, you just testified that 02:59:45</p> <p>5 you didn't know what Mr. Fried's job 02:59:47</p> <p>6 duties were, didn't you? 02:59:49</p> <p>7 A. I did. 02:59:50</p> <p>8 Q. So how do you -- 02:59:50</p> <p>9 A. Well, you asked me about his 02:59:52</p> <p>10 performance. 02:59:54</p> <p>11 Q. I didn't ask about the company's 02:59:54</p> <p>12 performance. I asked about Mr. Fried's 02:59:56</p> <p>13 performance. 02:59:58</p> <p>14 MS. SELTZER: I object to the 02:59:59</p> <p>15 form. Is there a question? 02:59:59</p> <p>16 Q. The question -- the question 03:00:01</p> <p>17 stands. Do you have any -- 03:00:02</p> <p>18 A. Read -- please repeat the 03:00:03</p> <p>19 question. 03:00:05</p> <p>20 Q. Do you have any knowledge of -- 03:00:06</p> <p>21 while Mr. McNamara was the CEO, do you 03:00:07</p> <p>22 have any personal knowledge of Mr. Fried's 03:00:10</p> <p>23 work performance as chairman? 03:00:12</p> <p>24 A. I would measure work performance 03:00:15</p> <p>25 based on the performance of the company. 03:00:16</p>	<p>1 GIRARDI</p> <p>2 A. Not really. 03:01:15</p> <p>3 Q. And do you know who from Code 03:01:16</p> <p>4 Hennessy asked him? 03:01:19</p> <p>5 A. I don't know specifically. 03:01:20</p> <p>6 Q. And what job duties did Mr. 03:01:22</p> <p>7 Fried assume? 03:01:27</p> <p>8 A. I don't know what his specific 03:01:27</p> <p>9 job duties were. He was the interim CEO 03:01:30</p> <p>10 of the business though. 03:01:32</p> <p>11 Q. Do you know if he -- excuse me. 03:01:33</p> <p>12 Do you know if he kept his job duties as 03:01:35</p> <p>13 chairman as well? 03:01:37</p> <p>14 A. I didn't know what his job 03:01:38</p> <p>15 duties were as chairman, so I couldn't 03:01:40</p> <p>16 answer that. 03:01:42</p> <p>17 Q. Okay. Now, while Mr. Fried was 03:01:43</p> <p>18 the interim CEO, do you have personal 03:01:46</p> <p>19 knowledge of the quality of his work 03:01:54</p> <p>20 performance? 03:01:55</p> <p>21 A. As measured how? 03:01:56</p> <p>22 Q. As measured by his executing his 03:01:57</p> <p>23 job duties. 03:02:00</p> <p>24 A. I wasn't -- I don't have a list 03:02:02</p> <p>25 of his job duties, so I can't really 03:02:04</p>
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<p>1 GIRARDI</p> <p>2 The company performed miserably during 03:00:18</p> <p>3 that period of time. 03:00:21</p> <p>4 Q. Okay. And while Mr. McNamara 03:00:22</p> <p>5 was CEO, did you have any conversations or 03:00:29</p> <p>6 e-mail communications about Mr. Fried's 03:00:31</p> <p>7 duties or his role at LVI with anyone? 03:00:34</p> <p>8 A. While Mr. McNamara was -- 03:00:38</p> <p>9 Q. Yes. 03:00:40</p> <p>10 A. I don't believe so. Not to my 03:00:41</p> <p>11 recollection. 03:00:43</p> <p>12 Q. Now, did there come a time when 03:00:43</p> <p>13 Mr. McNamara resigned? 03:00:48</p> <p>14 A. Yes. He resigned in either 03:00:50</p> <p>15 March or April of 2010. 03:00:53</p> <p>16 Q. Do you know why? 03:00:54</p> <p>17 A. He got another job. 03:00:55</p> <p>18 Q. And after Mr. McNamara resigned, 03:00:57</p> <p>19 who assumed his job duties? 03:01:01</p> <p>20 A. Burt Fried. 03:01:03</p> <p>21 Q. Do you know why? 03:01:05</p> <p>22 A. Code Hennessy asked him to 03:01:06</p> <p>23 assume the job duties. They were the 03:01:10</p> <p>24 owner of the business at the time. 03:01:12</p> <p>25 Q. Do you know why they asked him? 03:01:13</p>	<p>1 GIRARDI</p> <p>2 answer that. But again if you are 03:02:07</p> <p>3 measured by the performance of the 03:02:09</p> <p>4 business, the business continued to 03:02:10</p> <p>5 underperform. 03:02:12</p> <p>6 Q. Okay. So it didn't get any 03:02:12</p> <p>7 better? 03:02:19</p> <p>8 A. It got worse. 03:02:19</p> <p>9 Q. And did the economy have 03:02:20</p> <p>10 anything to do with that? 03:02:22</p> <p>11 A. The economy certainly had 03:02:23</p> <p>12 something to do with it, yes. 03:02:26</p> <p>13 Q. Okay. Do you know how LVI's 03:02:28</p> <p>14 competitors were doing during that same 03:02:30</p> <p>15 period of time? 03:02:33</p> <p>16 A. I don't have a good sense. 03:02:34</p> <p>17 Q. Now, while Mr. Fried was the 03:02:40</p> <p>18 interim CEO, did you have any 03:02:41</p> <p>19 conversations or e-mail communications 03:02:43</p> <p>20 with anyone about Mr. Fried's job duties 03:02:45</p> <p>21 or his role at LVI? 03:02:47</p> <p>22 MS. SELTZER: I am sorry. 03:02:51</p> <p>23 During what period? 03:02:52</p> <p>24 MR. DATOO: While Mr. Fried was 03:02:55</p> <p>25 the interim CEO. 03:02:56</p>

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<p>1 GIRARDI</p> <p>2 2010. 03:06:42</p> <p>3 Q. And do you know who made the 03:06:46</p> <p>4 decision to hire Mr. State? 03:06:48</p> <p>5 A. It was made by the owners at the 03:06:49</p> <p>6 time, Code Hennessy. 03:06:51</p> <p>7 Q. Did you participate in the 03:06:52</p> <p>8 decision to hire him? 03:06:53</p> <p>9 A. We were asked to interview him 03:06:54</p> <p>10 as prospective owners, and so we 03:06:57</p> <p>11 interviewed the candidate, and we told 03:06:59</p> <p>12 Code that we thought he was a good 03:07:01</p> <p>13 candidate. 03:07:03</p> <p>14 Q. And when you say "we," are you 03:07:04</p> <p>15 referring to -- 03:07:06</p> <p>16 A. Myself and Rajay Bagaria. 03:07:07</p> <p>17 Q. And did you recommend his hire? 03:07:11</p> <p>18 A. I don't recall that we 03:07:13</p> <p>19 recommended or not. We told them that we 03:07:14</p> <p>20 thought he was a good candidate. 03:07:16</p> <p>21 Q. Did you interview any other 03:07:18</p> <p>22 candidates? 03:07:20</p> <p>23 A. I did not, no. 03:07:20</p> <p>24 Q. Do you know if Mr. Bagaria did? 03:07:21</p> <p>25 A. I don't believe he did. 03:07:23</p>	<p>1 GIRARDI</p> <p>2 A. No. 03:08:18</p> <p>3 Q. Now, after Mr. State was hired, 03:08:20</p> <p>4 did there come a time when Mr. State began 03:08:28</p> <p>5 taking away Mr. Fried's job duties? 03:08:31</p> <p>6 MS. SELTZER: I object to the 03:08:34</p> <p>7 form. 03:08:36</p> <p>8 A. I -- yes. I think -- I don't 03:08:36</p> <p>9 understand that question. 03:08:40</p> <p>10 Q. Did Mr. Fried have any job 03:08:41</p> <p>11 duties as chairman? 03:08:44</p> <p>12 A. I told you I don't -- I don't 03:08:45</p> <p>13 know what his job duties as chairman were. 03:08:48</p> <p>14 Q. Okay. Do you know if Mr. Fried 03:08:50</p> <p>15 was performing any work as chairman? 03:08:55</p> <p>16 A. I don't really know what he was 03:08:57</p> <p>17 doing as chairman. 03:09:00</p> <p>18 Q. Okay. Did you attend a meeting 03:09:01</p> <p>19 on October 19, 2010 between Mr. State and 03:09:08</p> <p>20 Mr. Fried? 03:09:11</p> <p>21 A. I don't recall. 03:09:12</p> <p>22 Q. Do you know if they met that 03:09:14</p> <p>23 day? 03:09:16</p> <p>24 A. I don't recall. I don't know. 03:09:16</p> <p>25 Q. Did Mr. Fried ever tell you that 03:09:20</p>
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<p>1 GIRARDI</p> <p>2 Q. Do you know when Mr. State 03:07:25</p> <p>3 actually started working for LVI? 03:07:26</p> <p>4 A. I think it was September of 2010 03:07:28</p> <p>5 although I can't be sure. 03:07:31</p> <p>6 Q. Okay. Now, after Mr. State was 03:07:32</p> <p>7 hired, did Mr. Fried's job title change? 03:07:34</p> <p>8 A. He became chairman of the board. 03:07:37</p> <p>9 Q. And was he still an employee of 03:07:41</p> <p>10 LVI Services? 03:07:43</p> <p>11 A. I don't know what the 03:07:44</p> <p>12 distinction is, so I can't answer that. 03:07:45</p> <p>13 Q. Okay. Do you know what 03:07:47</p> <p>14 his -- what his job duties were as 03:07:49</p> <p>15 chairman of the board? 03:07:51</p> <p>16 A. No. 03:07:51</p> <p>17 Q. Now, after Mr. Fried became 03:07:52</p> <p>18 chairman of the board under Scott State, 03:08:02</p> <p>19 do you have any personal knowledge as to 03:08:05</p> <p>20 the quality of Mr. Fried's work 03:08:07</p> <p>21 performance? 03:08:09</p> <p>22 A. No. 03:08:10</p> <p>23 Q. Okay. Now, prior to Mr. State's 03:08:10</p> <p>24 hire, did you ever think about firing Mr. 03:08:15</p> <p>25 Fried? 03:08:18</p>	<p>1 GIRARDI</p> <p>2 Mr. State made a comment about his age? 03:09:23</p> <p>3 A. Mr. State, yes. 03:09:26</p> <p>4 Q. And when did Mr. Fried tell you 03:09:34</p> <p>5 that? 03:09:36</p> <p>6 A. Mr. Fried didn't tell me that. 03:09:36</p> <p>7 Mr. State mentioned that Burt took 03:09:38</p> <p>8 exception to something that he said 03:09:40</p> <p>9 offhand about his age, yes. 03:09:41</p> <p>10 Q. And do you recall -- 03:09:43</p> <p>11 A. I don't remember whether it was 03:09:44</p> <p>12 the October 19 meeting or not. 03:09:45</p> <p>13 Q. And do you recall when Mr. State 03:09:47</p> <p>14 told you that? 03:09:49</p> <p>15 A. No. 03:09:49</p> <p>16 Q. And do you know was it before or 03:09:50</p> <p>17 after the -- the November -- your first 03:09:51</p> <p>18 board meeting? 03:09:56</p> <p>19 A. It was probably just prior to 03:09:57</p> <p>20 the November board meeting. 03:09:58</p> <p>21 Q. And what did Mr. State tell you? 03:09:59</p> <p>22 A. He said that Burt is threatening 03:10:01</p> <p>23 an age discrimination suit if he doesn't 03:10:04</p> <p>24 have his job duties restored. I didn't 03:10:07</p> <p>25 know what his job duties were. 03:10:10</p>

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<p>1 GIRARDI</p> <p>2 Subsequently an e-mail was produced with a 03:10:12</p> <p>3 long list of job duties that Mr. Fried 03:10:14</p> <p>4 suggested were his duties that he would 03:10:17</p> <p>5 continue to perform. 03:10:22</p> <p>6 Q. Did Mr. State tell you what 03:10:23</p> <p>7 comment he made about Mr. Fried's age? 03:10:24</p> <p>8 A. I don't remember exactly what it 03:10:27</p> <p>9 was. 03:10:29</p> <p>10 Q. Do you know why Mr. State told 03:10:29</p> <p>11 you he made a comment about Mr. Fried's 03:10:33</p> <p>12 age? 03:10:36</p> <p>13 A. Because Burt -- Burt was 03:10:36</p> <p>14 threatening to make it an issue at the 03:10:38</p> <p>15 board meeting. So we should be aware of 03:10:39</p> <p>16 it. 03:10:43</p> <p>17 Q. But you don't remember what he 03:10:43</p> <p>18 said? 03:10:45</p> <p>19 A. I -- 03:10:47</p> <p>20 Q. The comment. 03:10:48</p> <p>21 A. I don't remember exactly what he 03:10:49</p> <p>22 said. 03:10:50</p> <p>23 Q. Do you remember what your 03:10:51</p> <p>24 reaction was to that comment? 03:10:52</p> <p>25 A. I thought it was overstating the 03:10:53</p>	<p>1 GIRARDI</p> <p>2 and, yes, that was mentioned. 03:11:45</p> <p>3 Q. That was during the board 03:11:47</p> <p>4 meeting? 03:11:49</p> <p>5 A. It was not during a formal board 03:11:49</p> <p>6 meeting. 03:11:52</p> <p>7 Q. Was he given an opportunity to 03:11:59</p> <p>8 speak about his situation during the 03:12:01</p> <p>9 formal board meeting? 03:12:03</p> <p>10 A. No. 03:12:04</p> <p>11 Q. Was it planned that he would 03:12:04</p> <p>12 discuss this after the formal board 03:12:05</p> <p>13 meeting? 03:12:07</p> <p>14 A. I believe it was part of the 03:12:07</p> <p>15 agenda, yes. 03:12:09</p> <p>16 Q. Mr. Girardi, if you could flip 03:12:10</p> <p>17 over to the next document in that pile in 03:12:25</p> <p>18 front of you. That should be marked 03:12:28</p> <p>19 Plaintiff's Exhibit 2. Have you -- 03:12:29</p> <p>20 MS. SELTZER: Is it Simmons 03:12:38</p> <p>21 030? 03:12:41</p> <p>22 MR. DATOO: Yes. I figured it 03:12:42</p> <p>23 is going to be an issue for you. I will 03:12:44</p> <p>24 read in the Bates stamp numbers. 03:12:46</p> <p>25 Q. Mr. Girardi, if you could just 03:12:48</p>
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<p>1 GIRARDI</p> <p>2 case. 03:10:55</p> <p>3 Q. What was? 03:10:55</p> <p>4 A. I thought Burt was out of line 03:10:58</p> <p>5 and that he was wrong and that Scott meant 03:11:00</p> <p>6 no malice, and there was nothing to it. 03:11:04</p> <p>7 Q. Did you speak to Mr. Fried -- 03:11:06</p> <p>8 A. I did not. 03:11:07</p> <p>9 Q. Okay. 03:11:08</p> <p>10 -- about that comment? 03:11:13</p> <p>11 A. No. 03:11:13</p> <p>12 Q. Did you speak to Mr. Fried about 03:11:14</p> <p>13 the discussion that he had with Mr. State 03:11:16</p> <p>14 that day in which the comment came out 03:11:17</p> <p>15 from? 03:11:19</p> <p>16 A. I didn't. 03:11:20</p> <p>17 Q. Okay. Did Mr. Fried ever tell 03:11:21</p> <p>18 you that Mr. State made a comment about 03:11:31</p> <p>19 him? 03:11:34</p> <p>20 A. Never. 03:11:34</p> <p>21 Q. Did he tell you at your first 03:11:35</p> <p>22 board meeting that Mr. State made a 03:11:37</p> <p>23 comment about his age? 03:11:38</p> <p>24 A. In the session after the formal 03:11:40</p> <p>25 board meeting, Mr. Fried made a speech, 03:11:42</p>	<p>1 GIRARDI</p> <p>2 look at this document. Let me know if you 03:12:52</p> <p>3 have seen it before? 03:12:54</p> <p>4 A. Yes, I have. 03:12:55</p> <p>5 Q. And when was the first time you 03:12:56</p> <p>6 saw that document? 03:12:58</p> <p>7 A. Probably on the day it was sent 03:12:59</p> <p>8 on October 28 prior to the board meeting. 03:13:01</p> <p>9 Q. Okay. And if I can turn your 03:13:04</p> <p>10 attention to the second page of the 03:13:06</p> <p>11 document. You've seen this document 03:13:09</p> <p>12 before? 03:13:14</p> <p>13 A. Yes. 03:13:14</p> <p>14 Q. And what is it? 03:13:15</p> <p>15 A. It is Burt's list of what he 03:13:16</p> <p>16 believes his areas of responsibility 03:13:19</p> <p>17 should be. 03:13:20</p> <p>18 Q. Is it should be or are? 03:13:22</p> <p>19 A. I took it to be should be 03:13:24</p> <p>20 because I didn't know what his areas of 03:13:28</p> <p>21 responsibility were. 03:13:30</p> <p>22 Q. Did you ever speak to Mr. Fried 03:13:30</p> <p>23 about this list? 03:13:32</p> <p>24 A. Never. 03:13:32</p> <p>25 Q. And did you ever discuss the 03:13:33</p>

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1 GIRARDI  
2 Q. Was Mr. State present when Mr. 03:36:54  
3 Fried addressed the board? 03:36:57  
4 A. Yes, he was. 03:36:58  
5 Q. And what did Mr. Fried say to 03:36:59  
6 the board? 03:37:01  
7 A. Burt discussed his long service 03:37:02  
8 with LVI. He was very emotional. He was 03:37:08  
9 rambling. He was not making a lot of 03:37:13  
10 sense. He was trying to basically justify 03:37:18  
11 the job description that he had laid out 03:37:24  
12 previously, and we all listened to him. 03:37:26  
13 Q. Did anyone ask any questions? 03:37:29  
14 A. During his talk I think there 03:37:31  
15 was some interaction, yes. 03:37:38  
16 Q. Do you know who interacted with 03:37:39  
17 him? 03:37:40  
18 A. At one point Burt made a comment 03:37:41  
19 about going to our sureties and telling 03:37:44  
20 them that LVI was -- with him not on board 03:37:48  
21 LVI was going to have no risk management. 03:37:59  
22 They were going to be in a difficult 03:38:03  
23 condition and that he was going to tell 03:38:04  
24 them that with what I thought was the 03:38:06  
25 hopes of undermining the business, which I 03:38:07

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1 GIRARDI  
2 felt was inappropriate. I told him that, 03:38:10  
3 and he didn't appreciate it. 03:38:12  
4 Q. When did you tell him that? 03:38:14  
5 A. During his speech. 03:38:16  
6 Q. And did anyone else interact 03:38:17  
7 with him other than you? 03:38:22  
8 A. I -- I'm sure people did, but I 03:38:23  
9 don't remember exactly. 03:38:26  
10 Q. Do you know how long Mr. Fried 03:38:28  
11 spoke for? 03:38:29  
12 A. Twenty, twenty-five minutes. I 03:38:29  
13 can't recall. 03:38:33  
14 Q. And did Mr. Fried say anything 03:38:34  
15 about a comment that Mr. State made about 03:38:35  
16 his age during this meeting? 03:38:38  
17 A. I believe he did make mention of 03:38:39  
18 it. He mentioned that he was considering 03:38:42  
19 a suit and that he had an appointment with 03:38:44  
20 his counsel after the board meeting. 03:38:47  
21 Q. And did -- do you recall what 03:38:49  
22 Mr. State said? 03:38:57  
23 A. Mr. State -- I don't recall 03:38:58  
24 exactly what he said, no. 03:38:59  
25 Q. And what happened after Mr. 03:39:01

1 GIRARDI  
2 Fried finished his address to the board? 03:39:05  
3 A. I believe Burt and Scott left 03:39:06  
4 the room, and the board discussed what we 03:39:09  
5 had just heard. 03:39:12  
6 Q. And what was discussed? 03:39:13  
7 A. Our impression of what Burt had 03:39:15  
8 to say. 03:39:19  
9 Q. And what was everyone's -- let's 03:39:20  
10 start with you. What was your impression 03:39:24  
11 of what -- 03:39:25  
12 A. Again, I think Burt was out of 03:39:26  
13 line. I think he was incoherent, 03:39:28  
14 emotional. I thought it was inappropriate 03:39:33  
15 the way he was addressing us. I thought 03:39:37  
16 he made threats against the business which 03:39:39  
17 I thought was entirely inappropriate, and 03:39:41  
18 I made that clear to the board that 03:39:43  
19 that -- that was my view. 03:39:47  
20 Q. And what did Mr. -- did 03:39:48  
21 Mr. Bagaria say anything? 03:39:50  
22 A. I don't remember exactly what he 03:39:51  
23 said. 03:39:53  
24 Q. And what about Mr. Schnabel? 03:39:53  
25 A. John Schnabel I don't recall 03:39:55

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1 GIRARDI  
2 exactly what he said. 03:39:57  
3 Q. And was Mr. State part of this 03:39:58  
4 caucus? 03:40:02  
5 A. I believe he and Burt at that 03:40:03  
6 point were out of the room, although I 03:40:05  
7 can't remember. 03:40:06  
8 Q. Do you recall what Mr. Buck 03:40:07  
9 said? 03:40:08  
10 A. No. 03:40:08  
11 Q. Do you recall what Mr. Fiorucci 03:40:09  
12 said? 03:40:10  
13 A. No. 03:40:11  
14 Q. How about Mr. Simmons? 03:40:11  
15 A. I don't remember exactly what he 03:40:13  
16 said, no. 03:40:16  
17 Q. And did the board vote on Mr. 03:40:16  
18 Fried's employment at this session? 03:40:23  
19 A. No. 03:40:27  
20 Q. Why not? 03:40:27  
21 A. We didn't think it was 03:40:29  
22 appropriate at the time, and we were going 03:40:30  
23 to make another offer to Burt and see if 03:40:32  
24 we accommodate him. 03:40:35  
25 Q. So -- 03:40:37

19 (Pages 70 to 73)

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<p>1 GIRARDI</p> <p>2 A. We still wanted to have Burt on 03:40:38</p> <p>3 as chairman. 03:40:40</p> <p>4 Q. Did the board come to some sort 03:40:40</p> <p>5 of consensus or resolution at the end of 03:40:42</p> <p>6 this session? 03:40:45</p> <p>7 A. The only consensus that we 03:40:45</p> <p>8 arrived at is that we asked John Schnabel 03:40:47</p> <p>9 to -- who had a closer relationship with 03:40:49</p> <p>10 Burt to talk to Burt and see if he could 03:40:52</p> <p>11 come to some kind of an arrangement or 03:40:54</p> <p>12 accomodation with him. 03:40:56</p> <p>13 Q. And did Mr. Schnabel have that 03:40:57</p> <p>14 conversation with Mr. Fried? 03:41:00</p> <p>15 A. I believe he did, yes. 03:41:01</p> <p>16 Q. And do you know what they 03:41:03</p> <p>17 discussed? 03:41:04</p> <p>18 A. Again, it was Burt's job 03:41:05</p> <p>19 description that he had outlined the 03:41:08</p> <p>20 responsibilities and whether or not there 03:41:10</p> <p>21 was some way that we could work with him 03:41:12</p> <p>22 in coming up with a job description that 03:41:15</p> <p>23 was satisfactory. 03:41:17</p> <p>24 Q. And do you know when Mr. 03:41:18</p> <p>25 Schnabel spoke to -- 03:41:21</p>	<p>1 GIRARDI</p> <p>2 would -- whatever Scott said is up for 03:42:15</p> <p>3 debate at this point. 03:42:19</p> <p>4 Q. Didn't you testify earlier that 03:42:20</p> <p>5 he told you he made a comment about Mr. 03:42:22</p> <p>6 Fried's age? 03:42:24</p> <p>7 A. He said that he made a comment 03:42:25</p> <p>8 that was taken out of context. 03:42:27</p> <p>9 Q. So he did make a comment about 03:42:28</p> <p>10 his age, right? 03:42:31</p> <p>11 A. He made a comment that he said 03:42:32</p> <p>12 Burt took out of the context. 03:42:34</p> <p>13 Q. Okay. So there is no he said 03:42:36</p> <p>14 she said about Mr. State making an age 03:42:38</p> <p>15 based comment, correct? 03:42:40</p> <p>16 MS. SELTZER: Objection to 03:42:42</p> <p>17 form. 03:42:43</p> <p>18 A. It wasn't an age-based comment. 03:42:43</p> <p>19 Q. What did Mr. State say? 03:42:45</p> <p>20 A. I don't know exactly what he 03:42:46</p> <p>21 said. 03:42:48</p> <p>22 Q. Okay. Did he -- do you know if 03:42:48</p> <p>23 he told -- said to Mr. Fried that Mr. 03:42:50</p> <p>24 Fried was 70 years old, 71 years old? 03:42:53</p> <p>25 A. I don't know exactly what he 03:42:56</p>
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<p>1 GIRARDI</p> <p>2 A. It was a few days after the -- I 03:41:23</p> <p>3 can't recall exactly, but it was within a 03:41:25</p> <p>4 couple of weeks of the board meeting. 03:41:27</p> <p>5 Q. Now, did you ever investigate 03:41:29</p> <p>6 Mr. Fried's allegation that he was -- he 03:41:39</p> <p>7 felt he was discriminated against because 03:41:43</p> <p>8 of his age by virtue of Mr. State's 03:41:46</p> <p>9 statement? 03:41:49</p> <p>10 MS. SELTZER: Objection to 03:41:52</p> <p>11 form. You can answer. 03:41:53</p> <p>12 A. No. 03:41:54</p> <p>13 Q. Why not? 03:41:55</p> <p>14 A. Because we had the parties in 03:41:56</p> <p>15 the room, and it was a question of he said 03:41:57</p> <p>16 she said. 03:41:59</p> <p>17 Q. Did you ask Mr. State if he made 03:42:00</p> <p>18 that comment? 03:42:02</p> <p>19 A. No. 03:42:02</p> <p>20 Q. Why not? 03:42:03</p> <p>21 A. He is -- he said that it was 03:42:04</p> <p>22 taken out of context. 03:42:07</p> <p>23 Q. So you did make that -- 03:42:08</p> <p>24 A. I don't -- I don't recall Scott 03:42:11</p> <p>25 ever saying he made it. He 03:42:13</p>	<p>1 GIRARDI</p> <p>2 said. No. 03:43:00</p> <p>3 Q. Do you know in he said -- if he 03:43:00</p> <p>4 asked Mr. Fried how long he expected to 03:43:02</p> <p>5 work? 03:43:04</p> <p>6 MS. SELTZER: Objection. Asked 03:43:04</p> <p>7 and answered. 03:43:05</p> <p>8 A. I don't remember exactly what 03:43:06</p> <p>9 was said, no. 03:43:09</p> <p>10 Q. If you could flip the next 03:43:10</p> <p>11 document over, it should be Plaintiff's 03:43:26</p> <p>12 Exhibit 6. It is Bagaria 113. 03:43:32</p> <p>13 Could you take a look at this 03:43:37</p> <p>14 document. Let me know if you've seen it 03:43:38</p> <p>15 before. 03:43:40</p> <p>16 A. I guess so. 03:43:41</p> <p>17 Q. Why do you guess so? 03:43:42</p> <p>18 A. I wrote it. 03:43:48</p> <p>19 Q. Okay. So you've seen it before? 03:43:48</p> <p>20 A. I have seen it, yes. 03:43:50</p> <p>21 Q. Okay. Now, according to this 03:43:52</p> <p>22 document it appears that a conference call 03:43:54</p> <p>23 between you -- actually let -- 03:44:00</p> <p>24 MR. DATOO: Strike that. 03:44:03</p> <p>25 Q. Why don't you review this 03:44:04</p>

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<p>1 GIRARDI</p> <p>2 A. I don't believe so, no. 03:48:19</p> <p>3 Q. Do you know if those two spoke 03:48:22</p> <p>4 that day or on or about that day? 03:48:24</p> <p>5 A. I can't remember. I -- November 03:48:26</p> <p>6 10 is a specific date. I can't recall 03:48:29</p> <p>7 whether they spoke. I don't believe I was 03:48:31</p> <p>8 present though to the best of my 03:48:33</p> <p>9 recollection. 03:48:35</p> <p>10 Q. Now, did there come a time when 03:48:35</p> <p>11 the board voted to terminate Mr. Fried? 03:48:38</p> <p>12 A. We did not have a formal vote to 03:48:40</p> <p>13 terminate Mr. Fried, no. 03:48:44</p> <p>14 Q. Why not? 03:48:45</p> <p>15 A. It never got to the point where 03:48:46</p> <p>16 we had to vote. 03:48:50</p> <p>17 Q. Why not? 03:48:51</p> <p>18 A. We sent Burt an offer for a 03:48:52</p> <p>19 consultancy agreement. He rejected it, 03:48:56</p> <p>20 and he subsequently resigned. 03:48:58</p> <p>21 Q. So when you say we, who do you 03:49:00</p> <p>22 mean by "we"? 03:49:07</p> <p>23 A. The board. The board. 03:49:07</p> <p>24 Q. So everyone was in agreement 03:49:09</p> <p>25 with that offer? 03:49:11</p>	<p>1 GIRARDI</p> <p>2 A. I believe we had a conference 03:50:00</p> <p>3 call where everybody agreed to send the 03:50:01</p> <p>4 letter to Burt. 03:50:03</p> <p>5 Q. Do you recall when that 03:50:05</p> <p>6 conference call was? 03:50:05</p> <p>7 A. I don't remember the date, no. 03:50:06</p> <p>8 Q. Do you recall who participated 03:50:08</p> <p>9 in that conference call? 03:50:10</p> <p>10 A. I believe it was the full board. 03:50:12</p> <p>11 Q. Would that be reflected in any 03:50:13</p> <p>12 minutes? 03:50:15</p> <p>13 A. It wasn't a board meeting, no. 03:50:15</p> <p>14 So I don't believe minutes exist. 03:50:17</p> <p>15 Q. Did you take any notes of this 03:50:19</p> <p>16 conversation? 03:50:20</p> <p>17 A. I don't remember whether I took 03:50:21</p> <p>18 notes or not, no. 03:50:23</p> <p>19 Q. And was this offer to keep Burt 03:50:24</p> <p>20 on an ultimatum? 03:50:31</p> <p>21 A. No. 03:50:33</p> <p>22 Q. If he rejected the offer, what 03:50:33</p> <p>23 were the consequences? 03:50:36</p> <p>24 MS. SELTZER: Objection. 03:50:39</p> <p>25 A. I believe -- I don't know what 03:50:40</p>
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<p>1 GIRARDI</p> <p>2 A. Yes. 03:49:11</p> <p>3 Q. Is that memorialized in writing 03:49:12</p> <p>4 any where? 03:49:14</p> <p>5 A. I don't know. 03:49:14</p> <p>6 Q. Was there one person who was -- 03:49:15</p> <p>7 who acted as a point person to get 03:49:19</p> <p>8 everyone's take on that letter? 03:49:22</p> <p>9 A. I don't recall, no. 03:49:25</p> <p>10 Q. Do you know if you are required 03:49:26</p> <p>11 to have Apollo, CHS, and Falcon approval 03:49:31</p> <p>12 if Mr. Fried was to be removed? 03:49:36</p> <p>13 A. I believe our investment 03:49:38</p> <p>14 agreement called for 03:49:40</p> <p>15 unanimous -- unanimous approval, yes. 03:49:43</p> <p>16 Q. But that is not memorialized 03:49:45</p> <p>17 anywhere in writing, correct? 03:49:47</p> <p>18 A. Our investment is in writing, 03:49:49</p> <p>19 yes. 03:49:50</p> <p>20 Q. I am sorry. That you had the 03:49:50</p> <p>21 sufficient parties' vote? 03:49:52</p> <p>22 A. It is not memorialized in 03:49:54</p> <p>23 writing, no. 03:49:57</p> <p>24 Q. So how do you know everyone was 03:49:58</p> <p>25 on board? 03:49:59</p>	<p>1 GIRARDI</p> <p>2 the consequences were. No. 03:50:41</p> <p>3 Q. Would he -- if you didn't accept 03:50:43</p> <p>4 this arrangement -- 03:50:46</p> <p>5 A. I don't recall exactly what the 03:50:48</p> <p>6 date was. I believe there was a date by 03:50:49</p> <p>7 which he had to accept the offer. 03:50:51</p> <p>8 Q. And if he didn't? 03:50:53</p> <p>9 A. Then, I don't recall exactly 03:50:53</p> <p>10 what the letter said. 03:50:56</p> <p>11 Q. And did you -- 03:50:57</p> <p>12 MR. DATOO: Strike that. 03:51:08</p> <p>13 MR. DATOO: We have to switch 03:51:25</p> <p>14 the tape. 03:51:26</p> <p>15 MS. SELTZER: Okay. 03:51:29</p> <p>16 MR. DATOO: Let's go off the 03:51:29</p> <p>17 record. 03:51:31</p> <p>18 MS. SELTZER: Sure. 03:51:31</p> <p>19 THE VIDEOGRAPHER: We are going 03:51:33</p> <p>20 off the record. 3:51 p.m., end of tape 03:51:33</p> <p>21 number 1. 03:51:37</p> <p>22 (Recess taken.) 03:59:34</p> <p>23 THE VIDEOGRAPHER: We are 03:59:34</p> <p>24 returning to the record, 3:59 p.m. 03:59:35</p> <p>25 beginning of tape number 2. 03:59:38</p>

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<p>1 GIRARDI</p> <p>2 Q. Mr. Girardi, if could you flip 03:59:39</p> <p>3 over to the next document in your pile. 03:59:41</p> <p>4 It should be Plaintiff's Exhibit 8. It is 03:59:43</p> <p>5 B. Simmons 44. 03:59:47</p> <p>6 A. Okay. 03:59:49</p> <p>7 Q. Is that identified as 03:59:50</p> <p>8 Plaintiff's Exhibit 8? 03:59:54</p> <p>9 A. Yes. 03:59:56</p> <p>10 MS. SELTZER: And let the 03:59:57</p> <p>11 record again show that Mr. Girardi is 03:59:58</p> <p>12 neither a sender or a receiver of this 04:00:01</p> <p>13 e-mail, of either. 04:00:03</p> <p>14 Q. Mr. Girardi, if could you flip 04:00:04</p> <p>15 to the second page. Have you ever seen 04:00:06</p> <p>16 this document before? 04:00:11</p> <p>17 A. I believe I have, yes. 04:00:12</p> <p>18 Q. Okay. And do you recall when 04:00:14</p> <p>19 you first saw it? 04:00:15</p> <p>20 A. Not exactly, no. 04:00:17</p> <p>21 Q. Did you ever discuss the 04:00:19</p> <p>22 contents of this letter with anybody? 04:00:22</p> <p>23 A. I don't remember a specific 04:00:25</p> <p>24 discussion about this letter, no. 04:00:27</p> <p>25 Q. Do you recall a general 04:00:28</p>	<p>1 GIRARDI</p> <p>2 Simmons, Simmons and Hogan, Falcon 04:01:59</p> <p>3 (Schnabel) AIC, Girardi and Reynolds, Buck 04:02:05</p> <p>4 not present, Scott State. "Schnabel: 04:02:10</p> <p>5 Burt is open to some role with day-to-day 04:02:16</p> <p>6 responsibilities. Insists this is due to 04:02:21</p> <p>7 his age," which I assume -- well I am just 04:02:23</p> <p>8 reading. 04:02:32</p> <p>9 Q. I just need you to read. 04:02:32</p> <p>10 A. "Burt sent preemption letter. 04:02:32</p> <p>11 Ignore. Good faith letter offer to Burt 04:02:32</p> <p>12 Fried. Next step send out letter to Burt. 04:02:36</p> <p>13 Treatment for Burt e-mail account Westport 04:02:39</p> <p>14 office, compensation. Treat his daughter 04:02:41</p> <p>15 as we would any other employee. Maintain 04:02:46</p> <p>16 status quo until 11:30. General counsel 04:02:49</p> <p>17 relocate eventually to Milford. Surety 04:02:53</p> <p>18 demonstrates strategy ability to de-lever 04:02:58</p> <p>19 and improve coverage ratios performance. 04:03:01</p> <p>20 Other senior manager off site in Denver 04:03:07</p> <p>21 week of 11/15." 04:03:11</p> <p>22 Q. Okay. Under the -- I guess at 04:03:12</p> <p>23 the top half of the document where you 04:03:21</p> <p>24 write -- 04:03:23</p> <p>25 MR. DATOO: Strike that. 04:03:27</p>
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<p>1 GIRARDI</p> <p>2 discussion about this letter? 04:00:32</p> <p>3 A. I am sure we had discussions 04:00:33</p> <p>4 about it. I can't recall anything. 04:00:36</p> <p>5 Q. When you say "we," who do you 04:00:38</p> <p>6 mean? 04:00:40</p> <p>7 A. Myself and Rajay, probably other 04:00:40</p> <p>8 members of the board of directors. 04:00:44</p> <p>9 Q. Okay. Mr. Girardi, if you could 04:00:45</p> <p>10 flip over the next document in the pile. 04:01:03</p> <p>11 It should be Plaintiff's Exhibit 9. 04:01:08</p> <p>12 MR. DATOO: Joanne, that is 04:01:19</p> <p>13 236. 04:01:22</p> <p>14 Q. Have you seen this document 04:01:23</p> <p>15 before? 04:01:25</p> <p>16 A. That is my handwriting, yes. 04:01:25</p> <p>17 Q. Okay. In the top left-hand 04:01:27</p> <p>18 corner it says 11/16. Does that mean you 04:01:39</p> <p>19 wrote this on November 16? 04:01:42</p> <p>20 A. Yes. 04:01:43</p> <p>21 Q. Okay. And can you do me a 04:01:44</p> <p>22 favor? Can you read everything you wrote 04:01:46</p> <p>23 into the record? 04:01:52</p> <p>24 A. This is an LVI board of 04:01:52</p> <p>25 directors call. Fiorucci, Code Hennessy 04:01:55</p>	<p>1 GIRARDI</p> <p>2 Q. So this was a -- were these 04:03:28</p> <p>3 notes memorializing a conference call that 04:03:30</p> <p>4 you had with board members? 04:03:33</p> <p>5 A. These are my notes of a call 04:03:34</p> <p>6 with the board members noted on 04:03:36</p> <p>7 the -- in -- on the page. 04:03:39</p> <p>8 Q. In addition to some other 04:03:40</p> <p>9 nonboard members, correct? 04:03:42</p> <p>10 A. Teddy Reynolds is not a board 04:03:43</p> <p>11 member. Correct. 04:03:45</p> <p>12 Q. And how about Hogan? 04:03:46</p> <p>13 A. Hogan is a board member. 04:03:47</p> <p>14 Q. Why is Mr. Bagaria's name not 04:03:49</p> <p>15 listed on here as either present or not 04:03:53</p> <p>16 present? 04:03:55</p> <p>17 A. He probably wasn't present. I 04:03:55</p> <p>18 don't remember though, but I -- I don't 04:03:57</p> <p>19 think he was present at this call. 04:03:59</p> <p>20 Q. Was Mr. Buck present? 04:04:01</p> <p>21 A. I listed him as not present, so 04:04:03</p> <p>22 I assume he wasn't. 04:04:05</p> <p>23 Q. So do you know why you didn't 04:04:06</p> <p>24 list Mr. Bagaria as not present? 04:04:08</p> <p>25 A. I -- I don't remember, no. 04:04:10</p>

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<p>1 GIRARDI</p> <p>2 Q. Okay. And it says here on the 04:04:12</p> <p>3 top half of the page it says "Burt - sent 04:04:20</p> <p>4 preemptive letter. Ignore and send good 04:04:26</p> <p>5 faith letter offer to Burt Fried." 04:04:28</p> <p>6 What did you mean by "ignore"? 04:04:31</p> <p>7 A. Burt had sent us I guess this 04:04:33</p> <p>8 letter from the previous exhibit. 04:04:35</p> <p>9 Q. So Plaintiff's Exhibit 8. Is 04:04:37</p> <p>10 that what you are referring to? 04:04:40</p> <p>11 A. I believe that is what it refers 04:04:41</p> <p>12 to, yes. 04:04:43</p> <p>13 Q. Can you just flip it over and 04:04:43</p> <p>14 make sure? 04:04:45</p> <p>15 A. I -- I am certain that that is 04:04:46</p> <p>16 what it referred to. 04:04:50</p> <p>17 Q. Okay. And why did you -- why 04:04:51</p> <p>18 did the board ignore the letter? 04:04:58</p> <p>19 A. We wanted to keep Burt 04:05:02</p> <p>20 on -- Burt on as chairman, and so we sent 04:05:04</p> <p>21 him our offer to enter into a consultancy 04:05:06</p> <p>22 agreement I believe shortly after this 04:05:10</p> <p>23 call. 04:05:12</p> <p>24 Q. And that was in response to the 04:05:12</p> <p>25 letter you received -- Plaintiff's Exhibit 04:05:14</p>	<p>1 GIRARDI</p> <p>2 was referring to. 04:06:12</p> <p>3 Q. Why would you take him off the 04:06:13</p> <p>4 e-mail system if he didn't accept your 04:06:14</p> <p>5 offer? 04:06:17</p> <p>6 A. Because he would no longer be an 04:06:17</p> <p>7 employee of the company I believe based on 04:06:19</p> <p>8 the terms of that letter. 04:06:20</p> <p>9 Q. So you would be terminating -- 04:06:22</p> <p>10 A. Well, he had -- 04:06:24</p> <p>11 actually -- excuse me. He had already 04:06:26</p> <p>12 sent us this letter. 04:06:27</p> <p>13 Q. Are you referring to Plaintiff's 04:06:32</p> <p>14 Exhibit 8? 04:06:33</p> <p>15 A. Yes. 04:06:34</p> <p>16 Q. So why would you terminate him 04:06:34</p> <p>17 if he didn't accept your offer? 04:06:38</p> <p>18 MS. SELTZER: Objection. 04:06:41</p> <p>19 A. We weren't terminating him. 04:06:42</p> <p>20 Q. Why would you take him off the 04:06:43</p> <p>21 e-mail account? 04:06:46</p> <p>22 A. Because -- I don't recall. 04:06:47</p> <p>23 Q. All right. You also mentioned 04:06:48</p> <p>24 west -- you wrote Westport office. 04:06:51</p> <p>25 A. Right. 04:06:53</p>
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<p>1 GIRARDI</p> <p>2 8? 04:05:18</p> <p>3 A. I believe so, yes. 04:05:18</p> <p>4 Q. And was there only one letter 04:05:20</p> <p>5 sent to Burt after you received this 04:05:24</p> <p>6 letter or were there two letters sent? 04:05:25</p> <p>7 A. I don't recall. I know we sent 04:05:27</p> <p>8 at least one letter with the offer for a 04:05:31</p> <p>9 consultancy agreement. I don't recall any 04:05:33</p> <p>10 other letter. 04:05:34</p> <p>11 Q. Do you know if it was coupled 04:05:35</p> <p>12 with a letter that terminated his 04:05:36</p> <p>13 employment? 04:05:38</p> <p>14 A. I don't remember that, no. 04:05:38</p> <p>15 Q. Did Mr. Simmons say anything 04:05:39</p> <p>16 during this call about sending a second 04:05:42</p> <p>17 letter terminating Mr. Fried's employment? 04:05:44</p> <p>18 A. I don't recall during this phone 04:05:47</p> <p>19 call whether he mentioned that, no. 04:05:50</p> <p>20 Q. Okay. Under the heading "next 04:05:52</p> <p>21 steps," number two, it says "treatment for 04:05:55</p> <p>22 Burt." What did you mean by that? 04:05:59</p> <p>23 A. If Burt was not going to accept 04:06:01</p> <p>24 our offer we were going to take him off 04:06:04</p> <p>25 the e-mail system, and that was what that 04:06:09</p>	<p>1 GIRARDI</p> <p>2 Q. What did you mean by that? 04:06:54</p> <p>3 A. There were discussions as we 04:06:55</p> <p>4 have talked about previously about 04:06:58</p> <p>5 eventually closing the Westport office. 04:06:58</p> <p>6 Q. Why was that listed on here? 04:07:01</p> <p>7 A. Because it probably came up on 04:07:03</p> <p>8 the phone call. 04:07:04</p> <p>9 Q. Why would it have come up on 04:07:05</p> <p>10 that phone call if you were discussing Mr. 04:07:10</p> <p>11 Fried? 04:07:12</p> <p>12 MS. SELTZER: Objection. 04:07:13</p> <p>13 A. We discussed a number of other 04:07:14</p> <p>14 things on this call probably in addition 04:07:16</p> <p>15 to Mr. Fried, including cost savings 04:07:18</p> <p>16 initiatives that the company was 04:07:22</p> <p>17 considering at the time. 04:07:23</p> <p>18 Q. Okay. You also wrote "treat his 04:07:24</p> <p>19 daughter as we would treat any other 04:07:26</p> <p>20 employee." 04:07:28</p> <p>21 A. Yes. 04:07:29</p> <p>22 Q. "Maintain status quo until 04:07:29</p> <p>23 11:30." What did you mean by that? 04:07:32</p> <p>24 A. I believe in the context of the 04:07:33</p> <p>25 cost savings initiatives that were 04:07:36</p>

24 (Pages 90 to 93)

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1 GIRARDI  
2 discussed Scott raised the issue that 04:07:37  
3 Burt's daughter was an employee at 04:07:42  
4 Westport. He was concerned as to how it 04:07:44  
5 would look if she was part of the 04:07:46  
6 reduction in force that was being planned. 04:07:48  
7 Our view as a board was that if she was 04:07:50  
8 worth retaining as an employee, we would 04:07:53  
9 retain her. If she wasn't, we would treat 04:07:56  
10 her like any other employee. 04:07:58  
11 Q. And do you know was she -- do 04:08:00  
12 you know when she was selected -- was 04:08:04  
13 there a list of people -- 04:08:06  
14 A. No. 04:08:07  
15 Q. -- who were going to be laid 04:08:08  
16 off? 04:08:10  
17 A. No, there wasn't. 04:08:10  
18 Q. So how did people know who was 04:08:11  
19 going to be laid off or not? 04:08:13  
20 A. We didn't know who was going to 04:08:15  
21 be laid. Scott mentioned that she was an 04:08:17  
22 employee, and that given the situation 04:08:19  
23 with Burt he was sensitive to it, and the 04:08:21  
24 view of the board was that it's a 04:08:24  
25 reduction in force. If she is worth 04:08:26

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1 GIRARDI  
2 keeping, you can keep her. If not we 04:08:28  
3 treat her like any other employee which is 04:08:31  
4 what I wrote. 04:08:33  
5 Q. At this point in time was it 04:08:33  
6 already decided if the Westport office was 04:08:35  
7 going to be closed or not? 04:08:37  
8 A. It hadn't been decided. It 04:08:39  
9 was -- it was certainly targeted as an 04:08:41  
10 office that was costly and that we would 04:08:43  
11 attempt to close. 04:08:45  
12 Q. Do you know when it was decided 04:08:46  
13 that the Westport office was going to 04:08:47  
14 close? 04:08:51  
15 A. I don't remember exactly. 04:08:51  
16 Probably sometime in December, but I don't 04:08:52  
17 remember exactly when. 04:08:56  
18 Q. Okay. Now, it says here 04:08:57  
19 "general counsel relocate eventually to 04:09:01  
20 Milford." Do you know what that means? 04:09:04  
21 A. I believe Greg DiCarlo worked 04:09:05  
22 out of Westport, which I didn't know at 04:09:09  
23 the time, and his view was that if the 04:09:11  
24 Westport office would eventually close we 04:09:14  
25 could move Greg to Milford. 04:09:16

1 GIRARDI  
2 Q. Do you know when Mr. DiCarlo 04:09:18  
3 became general counsel of LVI? 04:09:20  
4 A. No. No, I don't. 04:09:22  
5 Q. Do you know how long he has been 04:09:23  
6 with LVI? 04:09:24  
7 A. No. 04:09:25  
8 Q. And you also wrote "surety" I 04:09:26  
9 think "demonstrate strategy. Ability to 04:09:32  
10 de-lever" -- 04:09:37  
11 A. Delever. 04:09:38  
12 Q. Delever is that short for 04:09:39  
13 de-leverage? 04:09:42  
14 A. Yes. 04:09:42  
15 Q. And can you just -- sorry. Help 04:09:43  
16 me out with that? 04:09:45  
17 A. "Demonstrates strategy, ability 04:09:46  
18 to de-lever and improve coverage ratios 04:09:48  
19 and performance." 04:09:51  
20 Q. What did you mean by that? 04:09:52  
21 A. The sureties are an important 04:09:54  
22 part of the business. We were concerned 04:09:55  
23 given Burt's outburst at the board meeting 04:09:57  
24 that he was going to attempt to undermine 04:10:00  
25 us with the sureties. So we felt it was 04:10:02

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1 GIRARDI  
2 important that Scott and whoever else was 04:10:06  
3 appropriate on the board go to the 04:10:08  
4 sureties and have a meeting with them and 04:10:10  
5 assure them that we have got a much 04:10:12  
6 stronger balance sheet and that we are 04:10:15  
7 prepared to go forward. 04:10:17  
8 Q. So it appears to me that 04:10:19  
9 everything written on this document had to 04:10:21  
10 do with Burt Fried? 04:10:23  
11 MS. SELTZER: Objection. 04:10:25  
12 A. Is that a question? 04:10:29  
13 Q. Is that correct? 04:10:30  
14 A. Closing the Westport office, I 04:10:32  
15 don't know that that has to with Burt 04:10:35  
16 Fried. No. 04:10:37  
17 Q. So on this call, the only one 04:10:37  
18 item you discussed that you claimed was 04:10:41  
19 not related to Burt Fried was the Westport 04:10:45  
20 office? 04:10:47  
21 A. The Denver off site didn't 04:10:48  
22 relate to Burt Fried either. 04:10:51  
23 Q. Can you point that -- 04:10:53  
24 A. At the bottom of the page. 04:10:54  
25 Q. Other. Okay. Now, that is 04:10:57

25 (Pages 94 to 97)

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1               GIRARDI  
2     A. No.                               04:33:25  
3     Q. Okay. You just assumed someone   04:33:26  
4 was going to pick up the tab?           04:33:29  
5     A. Yes.                              04:33:31  
6     MS. SELTZER: Objection. Is          04:33:32  
7 that a question?                        04:33:33  
8     MR. DATOO: I guess he answered   04:33:33  
9 it. So --                                04:33:34  
10    THE WITNESS: I answered it.       04:33:36  
11 Sorry.                                  04:33:37  
12    MS. SELTZER: That is okay.        04:33:38  
13    Q. Have you ever had any            04:33:39  
14 communications with any accountants    04:33:41  
15 regarding any contingencies for this case? 04:33:42  
16    A. No.                                04:33:45  
17    Q. Okay.                              04:33:46  
18    MR. DATOO: Why don't we take a    04:33:49  
19 five-minute break, and then we will    04:33:50  
20 conclude.                                04:33:52  
21    MS. SELTZER: Sure.                 04:33:54  
22    THE VIDEOGRAPHER: We're going    04:33:55  
23 off the record. 4:33 p.m.               04:33:56  
24       (Recess taken.)                   04:41:26  
25    THE VIDEOGRAPHER: We're            04:41:26

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1                   GIRARDI

2   returning to the record. 4:41 p.m.           04:41:27

3   Q. Mr. Girardi, did you participate   04:41:30

4   in the negotiation of the terms of the   04:41:32

5   investor securities agreement?           04:41:34

6   A. Yes.                                   04:41:36

7   MR. DATOO: I have no further           04:41:40

8   questions.                               04:41:40

9   THE VIDEOGRAPHER: We're going   04:41:42

10 off the record. The time is 4:41, end of   04:41:43

11 today's questioning.                   04:41:46

12       (Time noted: 4:41 p.m.)           04:41:49

13

14

15

16

17

18

19                   GERALD GIRARDI

20

21 Subscribed and sworn to before me

22 this    day of                   , 2011

23

24

25

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GIRARDI  
CERTIFICATION

I, DEBBIE ZAROMATIDIS, a Shorthand Reporter and a Notary Public, do hereby certify that the foregoing witness, GERALD GIRARDI, was duly sworn on the date indicated, and that the foregoing is a true and accurate transcription of my stenographic notes.

I further certify that I am not employed by nor related to any party to this action.

DEBBIE ZAROMATIDIS

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<b>ERRATA SHEET VERITEXT/NEW YORK REPORTING, LLC</b>			
CASE NAME: Fried, Burton T. v. LVI Services, Inc., et al.			
DATE OF DEPOSITION: May 23,			
WITNESSES' NAME: GERALD GIRARDI			
PAGE	LINE(S)	CHANGE	REASON
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SUBSCRIBED AND SWORN TO BEFORE ME	_____
THIS ____ DAY OF _____, 20__.	

  
  

(NOTARY PUBLIC) _____	MY COMMISSION EXPIRES: _____
-----------------------	------------------------------

# Exhibit 6



1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4 No. 10 Civ. 9308 (JSR)

5 -----x

6 BURTON T. FRIED,

7 Plaintiff,

8 - against -

9 LVI SERVICES, INC., LVI PARENT CORP., CODE  
10 HENNESSY SIMMONS, LLC d/b/a CHS PRIVATE  
11 EQUITY V LP; APOLLO INVESTMENT CORP.,  
12 SCOTT E. STATE, in his official and  
13 individual capacities; BRIAN SIMMONS, in  
14 his official and individual capacities;  
15 RAJAY BAGARIA, in his official and  
16 individual capacities; GERALD J. GIRARDI,  
17 in his official and individual capacities,

18 Defendants.

19 -----x

20 June 2, 2011

10:03 a.m.

21  
22  
23  
24  
25  
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516-608-2400

<p>2</p> <p>1 2 3 4 VIDEOTAPE DEPOSITION of GREGORY 5 DICARLO, taken by the Plaintiff, pursuant 6 to Notice, held at the offices of Thompson 7 Wigdor &amp; Gilly, LLP, 85 Fifth Avenue, New 8 York, New York, before Debbie Zaromatidis, 9 a Shorthand Reporter and Notary Public of 10 the State of New York. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>4</p> <p>1 2 STIPULATIONS 3 4 IT IS HEREBY STIPULATED AND 5 AGREED by and between the Attorneys for 6 the respective parties hereto that filing 7 and sealing be and the same are hereby 8 waived. 9 IT IS FURTHER STIPULATED AND 10 AGREED that all objections except as to 11 the form of the question, shall be 12 reserved to the time of the trial. 13 IT IS FURTHER STIPULATED AND 14 AGREED that the within examination may be 15 signed and sworn to before any notary 16 public with the same force and effect as 17 though signed and sworn to before this 18 Court. 19 20 21 22 23 24 25</p>
<p>3</p> <p>1 2 APPEARANCES: 3 4 THOMPSON WIGDOR &amp; GILLY, LLP 5 Attorneys for Plaintiff 6 85 Fifth Avenue 7 New York, New York 10003 8 BY: SHAFFIN A. DATOO, ESQ. 9 10 11 SIDLEY AUSTIN, LLP 12 Attorneys for Defendants 13 787 Seventh Avenue 14 New York, New York 10019 15 BY: JOANNE SELTZER, ESQ. 16 17 18 ALSO PRESENT: 19 BURTON FRIED 20 J.D. MARTINEZ, Videographer 21 22 23 24 25</p>	<p>5</p> <p>1 2 THE VIDEOGRAPHER: We are on 10:03:36 3 the record. My name is J.D. Martinez of 10:03:57 4 Veritext New York. The date today is June 10:03:59 5 2, 2011, and the time is approximately 10:04:02 6 10:04 a.m. This deposition is being held 10:04:06 7 at Thompson Wigdor &amp; Gilly LLP located at 10:04:08 8 85 Fifth Avenue, New York, New York. The 10:04:12 9 caption of this case is Burton T. Fried 10:04:15 10 versus LVI Services, Inc., et al., filed 10:04:17 11 in the United States District Court, 10:04:21 12 Southern District of New York. The name 10:04:22 13 of the witness is Gregory DiCarlo. 10:04:24 14 At this time the attorneys will 10:04:27 15 identify themselves and the parties they 10:04:29 16 represent. After which our court 10:04:31 17 reporter, Debbie Zaromatidis, will swear 10:04:32 18 in the witness, and we can proceed. 10:04:35 19 MS. SELTZER: Joanne Seltzer, 10:04:37 20 Sidley Austin on behalf of the defendants. 10:04:39 21 MR. DATOO: Shaffin Datoos, 10:04:39 22 Thompson Wigdor &amp; Gilly for the plaintiff 10:04:41 23 Burt Fried. 10:04:43 24 25</p>

2 (Pages 2 to 5)

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<p>6</p> <p>1 2 GREGORY DICARLO, 10:04:43 3 having first been duly sworn by a Notary 10:04:43 4 Public of the State of New York, was 10:04:43 5 examined and testified as follows: 10:04:43 6 EXAMINATION BY MR. DATOO: 10:04:51 7 Q. Good morning, Mr. DiCarlo. 10:04:51 8 A. Good morning. 10:04:53 9 Q. As you know, my name is Shaffin 10:04:54 10 Datto, and I represent Mr. Fried in this 10:04:55 11 case. I am going to ask you some 10:04:57 12 questions today, and hopefully you can 10:05:03 13 give me some answers because you're an 10:05:05 14 attorney. I assume you know what a 10:05:08 15 deposition is, so we don't have to really 10:05:09 16 cover a lot of ground rules. 10:05:12 17 I just want to ask you some 10:05:16 18 quick preliminary questions. 10:05:19 19 A. Sure. 10:05:21 20 Q. Is your ability to tell the 10:05:22 21 truth in any way impaired today? 10:05:23 22 A. No. 10:05:25 23 Q. Okay. And I'm -- I'm going to 10:05:26 24 assume that IF you answer a question that 10:05:32 25 you understood it. If you don't 10:05:34</p>	<p>8</p> <p>1 DICARLO 2 A. Yes. 10:06:16 3 Q. Did you look there for any 10:06:17 4 responsive documents? 10:06:18 5 A. No. I don't use my personal 10:06:19 6 e-mail account for any business-related 10:06:23 7 purposes. 10:06:25 8 Q. Okay. Do you keep any 10:06:26 9 work-related documents at home? 10:06:29 10 A. No. 10:06:31 11 Q. Have you ever been sued? 10:06:31 12 A. Yes. 10:06:34 13 Q. How many times? 10:06:34 14 A. Once. 10:06:38 15 Q. And when was that? 10:06:39 16 A. That was around 1996. 10:06:40 17 Q. And -- 10:06:45 18 A. To the best of my recollection. 10:06:46 19 Q. Sorry? 10:06:47 20 A. To the best of my recollection. 10:06:48 21 Q. And what was the nature of that 10:06:49 22 lawsuit? 10:06:51 23 A. I was a board member for my 10:06:51 24 condominium association. 10:06:53 25 Q. Okay. 10:06:55</p>
<p>7</p> <p>1 DICARLO 2 understand it, please let me know, and 10:05:35 3 I'll ask it a different way. If you need 10:05:37 4 a break, let me know. The only condition 10:05:39 5 I have is that you answer the last 10:05:41 6 question asked. 10:05:42 7 A. Okay. 10:05:43 8 Q. In connection with this lawsuit, 10:05:44 9 did you provide your attorney with all 10:05:46 10 responsive documents? 10:05:48 11 A. Yes. 10:05:49 12 Q. Okay. And where did you look to 10:05:51 13 find the documents? 10:05:53 14 A. Predominantly with the people 10:05:54 15 that would have those documents including 10:05:59 16 IT. 10:06:01 17 Q. Okay. Did you check 10:06:02 18 your -- your office for any documents? 10:06:07 19 A. I had no documents -- 10:06:08 20 Q. Okay. 10:06:10 21 A. -- in my stuff. 10:06:11 22 Q. Do you have a personal e-mail 10:06:13 23 account? 10:06:15 24 A. Personal? 10:06:15 25 Q. Yes. 10:06:16</p>	<p>9</p> <p>1 DICARLO 2 A. And the entire board was sued by 10:06:55 3 a disgruntled resident. 10:06:57 4 Q. Has anyone ever accused you of 10:07:02 5 discrimination? 10:07:07 6 A. No. 10:07:08 7 Q. Have you ever given sworn 10:07:08 8 testimony before? 10:07:13 9 A. Yes. 10:07:13 10 Q. How many times? 10:07:14 11 A. I believe twice. 10:07:15 12 Q. And when was the first time you 10:07:19 13 gave sworn testimony? 10:07:23 14 A. The first time was a deposition 10:07:24 15 about twenty years ago. 10:07:26 16 Q. And what was the nature of that 10:07:28 17 case? 10:07:30 18 A. To the best of my knowledge, 10:07:30 19 since I was not a party to it, it had to 10:07:33 20 do with a union employee on a construction 10:07:35 21 project that was laid off and brought a 10:07:39 22 claim because he believed he was laid off 10:07:42 23 due to his union activities. 10:07:46 24 Q. And when was the second time you 10:07:48 25 gave sworn testimony? 10:07:54</p>

3 (Pages 6 to 9)

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<p style="text-align: right;">14</p> <p>1 DICARLO</p> <p>2 Q. Okay. Do you know for how long? 10:11:14</p> <p>3 A. I believe it is -- I'm sure it 10:11:15</p> <p>4 is in excess of 20 years. I don't know 10:11:19</p> <p>5 how much in excess. 10:11:21</p> <p>6 Q. And do you recall what his last 10:11:25</p> <p>7 job title at LVI Services was? 10:11:27</p> <p>8 A. I believe it was chairman. 10:11:29</p> <p>9 Q. Now, did Mr. Fried also work for 10:11:30</p> <p>10 LVI Parent? 10:11:32</p> <p>11 A. Not to my knowledge. 10:11:33</p> <p>12 Q. Okay. Did he have a -- did he 10:11:34</p> <p>13 serve on the board of LVI Parent? 10:11:39</p> <p>14 A. I believe he did, yes. 10:11:41</p> <p>15 Q. And was he chairman of the board 10:11:42</p> <p>16 of LVI Parent? 10:11:44</p> <p>17 A. I believe he was, yes. 10:11:46</p> <p>18 Q. Did you attend any board 10:11:48</p> <p>19 meetings of LVI Parent Corp. since you've 10:11:51</p> <p>20 been employed? 10:11:54</p> <p>21 A. No. 10:11:55</p> <p>22 Q. Is there a reason why not? 10:11:55</p> <p>23 A. Not to my knowledge. I've just 10:11:59</p> <p>24 never been asked. 10:12:02</p> <p>25 Q. Okay. Now, when did you start 10:12:03</p>	<p style="text-align: right;">16</p> <p>1 DICARLO</p> <p>2 Q. Were there any other 10:13:16</p> <p>3 attorneys -- 10:13:25</p> <p>4 MR. DATOO: Strike that. 10:13:26</p> <p>5 Q. Were there any other people that 10:13:27</p> <p>6 had -- held the position as counsel? 10:13:28</p> <p>7 A. No. 10:13:30</p> <p>8 Q. Okay. So were you and Mr. Fried 10:13:31</p> <p>9 the only attorneys there that you know of? 10:13:34</p> <p>10 A. That's correct, yes. 10:13:36</p> <p>11 MS. SELTZER: Objection. At 10:13:37</p> <p>12 the time, right? In '05? 10:13:38</p> <p>13 MR. DATOO: Yes. 10:13:41</p> <p>14 Q. Do you know what Mr. Fried's 10:13:42</p> <p>15 duties were as CEO, president and CEO when 10:13:43</p> <p>16 you first started? 10:13:47</p> <p>17 A. I understood them to be that he 10:13:48</p> <p>18 ran the entire company. He was 10:13:51</p> <p>19 responsible for every aspect of the 10:13:54</p> <p>20 company's success and growth. 10:13:56</p> <p>21 Q. Okay. And while Mr. Fried was 10:13:58</p> <p>22 CEO, did you share any of your job duties 10:14:02</p> <p>23 with Mr. Fried? 10:14:04</p> <p>24 MS. SELTZER: I object to the 10:14:08</p> <p>25 form, but you can answer. 10:14:09</p>
<p style="text-align: right;">15</p> <p>1 DICARLO</p> <p>2 working at LVI Services? 10:12:09</p> <p>3 A. May of 2005. 10:12:10</p> <p>4 Q. And what was your job title 10:12:13</p> <p>5 then? 10:12:18</p> <p>6 A. Counsel. 10:12:18</p> <p>7 Q. And who did you report to? 10:12:18</p> <p>8 A. Burt Fried. 10:12:22</p> <p>9 Q. And at that time what was Mr. 10:12:23</p> <p>10 Fried's job title? 10:12:32</p> <p>11 A. At the time I started I believe 10:12:33</p> <p>12 it was president and CEO. 10:12:34</p> <p>13 Q. And what office did you work in 10:12:36</p> <p>14 when you first started? 10:12:43</p> <p>15 A. An office in Westport, 10:12:44</p> <p>16 Connecticut. 10:12:46</p> <p>17 Q. Did you spend all of your time 10:12:51</p> <p>18 there? 10:12:52</p> <p>19 A. Yes. 10:12:53</p> <p>20 Q. And what were your job duties as 10:12:53</p> <p>21 counsel? 10:12:55</p> <p>22 A. It was reviewing contracts, 10:12:55</p> <p>23 providing assistance with litigated 10:12:58</p> <p>24 matters, drafting various legal documents 10:13:02</p> <p>25 required by the company. 10:13:11</p>	<p style="text-align: right;">17</p> <p>1 DICARLO</p> <p>2 A. The best way I could describe is 10:14:10</p> <p>3 that I reported to Burt. I managed and 10:14:16</p> <p>4 dealt with the day-to-day routine legal 10:14:20</p> <p>5 matters, the filing -- I mean the 10:14:25</p> <p>6 reviewing of contracts, any routine 10:14:28</p> <p>7 matter, if a branch needed assistance on 10:14:32</p> <p>8 drafting a release or the lack or having 10:14:36</p> <p>9 something like that reviewed. Anything 10:14:38</p> <p>10 beyond that that required some authority 10:14:42</p> <p>11 for decision making, I reported to Burt on 10:14:43</p> <p>12 it, and generally Burt would give me a 10:14:48</p> <p>13 direction as to how he wanted to handle 10:14:52</p> <p>14 it, and then I would implement what he 10:14:54</p> <p>15 wanted done. 10:14:56</p> <p>16 Q. Okay. Did you ever work with 10:14:57</p> <p>17 Mr. Fried on legal matters other than 10:15:00</p> <p>18 reporting -- other than seeking his 10:15:04</p> <p>19 approval for certain things? 10:15:06</p> <p>20 A. Yeah. We worked together on any 10:15:07</p> <p>21 significant litigated matters certainly. 10:15:11</p> <p>22 We worked together on any nonroutine 10:15:16</p> <p>23 contract negotiation, something of -- of a 10:15:20</p> <p>24 larger significance dollar-wise or 10:15:24</p> <p>25 something unusual in the project itself 10:15:28</p>

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<p style="text-align: right;">22</p> <p>1 DICARLO</p> <p>2 A. My job title? 10:19:26</p> <p>3 Q. Yes. 10:19:27</p> <p>4 A. It was still counsel. 10:19:27</p> <p>5 Q. And who did you report to when 10:19:28</p> <p>6 Mr. McNamara was CEO? 10:19:30</p> <p>7 A. I was never formally told who I 10:19:32</p> <p>8 report to, but in practice I reported to 10:19:35</p> <p>9 Burt. 10:19:36</p> <p>10 Q. And while Mr. McNamara was CEO, 10:19:43</p> <p>11 were you still working in the Westport 10:19:46</p> <p>12 office? 10:19:47</p> <p>13 A. Yes. 10:19:48</p> <p>14 Q. Did you work at the Westport 10:19:48</p> <p>15 office your entire time at LVI Services? 10:19:50</p> <p>16 A. Yes. 10:19:52</p> <p>17 Q. And while Mr. McNamara was CEO, 10:19:53</p> <p>18 did your job duties change in any way from 10:19:55</p> <p>19 when Mr. Fried was CEO? 10:19:58</p> <p>20 A. No. 10:20:00</p> <p>21 Q. Okay. Now, while Mr. McNamara 10:20:00</p> <p>22 was CEO, did the nature of your -- working 10:20:05</p> <p>23 relationship with Burt remain the same? 10:20:10</p> <p>24 A. Yes, it did. 10:20:12</p> <p>25 Q. Were you both performing legal 10:20:16</p>	<p style="text-align: right;">24</p> <p>1 DICARLO</p> <p>2 Fried -- while Mr. McNamara was CEO, did 10:20:59</p> <p>3 you feel that Mr. Fried was stepping on 10:21:02</p> <p>4 your toes? 10:21:04</p> <p>5 A. No. 10:21:06</p> <p>6 Q. Now, while Mr. McNamara was CEO, 10:21:06</p> <p>7 were you ever confused as to who was 10:21:18</p> <p>8 making the final decisions at LVI? 10:21:20</p> <p>9 MS. SELTZER: Objection to the 10:21:22</p> <p>10 form. 10:21:23</p> <p>11 A. I won't say I was confused by 10:21:23</p> <p>12 it, but I didn't necessarily know who was 10:21:25</p> <p>13 making the final decision on each and 10:21:28</p> <p>14 every matter. 10:21:30</p> <p>15 Q. Okay. Why is that? 10:21:31</p> <p>16 A. I was not privy to any 10:21:33</p> <p>17 communication or every communication Burt 10:21:35</p> <p>18 might have had with Mr. McNamara. So 10:21:37</p> <p>19 whether or not Burt was making the 10:21:39</p> <p>20 decision or making that decision only 10:21:41</p> <p>21 after consulting with Mr. McNamara, I 10:21:42</p> <p>22 don't know. 10:21:45</p> <p>23 Q. Okay. Do you know if other 10:21:46</p> <p>24 employees were confused as to who was 10:21:49</p> <p>25 making the final decisions at LVI? 10:21:51</p>
<p style="text-align: right;">23</p> <p>1 DICARLO</p> <p>2 work? 10:20:18</p> <p>3 A. Yes. 10:20:18</p> <p>4 Q. And was Mr. Fried still handling 10:20:19</p> <p>5 the same legal work that he did when he 10:20:24</p> <p>6 was CEO? 10:20:30</p> <p>7 A. Yes. 10:20:31</p> <p>8 Q. And the same with you? 10:20:31</p> <p>9 A. Yes. 10:20:33</p> <p>10 Q. Okay. And this is all while Mr. 10:20:33</p> <p>11 McNamara was CEO, correct? 10:20:35</p> <p>12 A. Correct. 10:20:38</p> <p>13 Q. Okay. And did you continue to 10:20:38</p> <p>14 seek Mr. Fried's advice on certain 10:20:40</p> <p>15 matters? 10:20:42</p> <p>16 A. Yes. 10:20:42</p> <p>17 Q. Okay. While Mr. McNamara was 10:20:43</p> <p>18 CEO? 10:20:45</p> <p>19 A. Yes. 10:20:45</p> <p>20 Q. Okay. And while Mr. McNamara 10:20:46</p> <p>21 was CEO, did you feel that Mr. Fried was 10:20:48</p> <p>22 interfering with your ability to do your 10:20:51</p> <p>23 job in any way? 10:20:53</p> <p>24 A. No. 10:20:54</p> <p>25 Q. Did you feel that Mr. 10:20:55</p>	<p style="text-align: right;">25</p> <p>1 DICARLO</p> <p>2 MS. SELTZER: I object to the 10:21:54</p> <p>3 form. He didn't say he was confused, but 10:21:55</p> <p>4 go ahead. 10:21:57</p> <p>5 MR. DATOO: Okay. 10:21:58</p> <p>6 A. Not that I am aware of. 10:22:00</p> <p>7 Q. And while Mr. McNamara was CEO, 10:22:02</p> <p>8 were you ever confused as to who to report 10:22:08</p> <p>9 to on certain matters? 10:22:10</p> <p>10 A. No. It was consistently Burt. 10:22:11</p> <p>11 Q. Okay. Do you know if other 10:22:14</p> <p>12 employees or do you know if any 10:22:20</p> <p>13 employees -- employee was confused as to 10:22:25</p> <p>14 who to report to on certain matters -- 10:22:26</p> <p>15 MR. SELTZER: Objection. 10:22:29</p> <p>16 Q. -- while Mr. McNamara was CEO? 10:22:31</p> <p>17 MS. SELTZER: Objection. Asked 10:22:34</p> <p>18 and answered, but you can answer again. 10:22:35</p> <p>19 A. Not that I am aware of. 10:22:36</p> <p>20 Q. Now, while Mr. McNamara was CEO, 10:22:37</p> <p>21 do you have personal -- do you have any 10:22:41</p> <p>22 personal knowledge of Mr. Fried's work 10:22:43</p> <p>23 performance? 10:22:45</p> <p>24 A. No, other than my direct 10:22:45</p> <p>25 dealings with Mr. Fried as I previously 10:22:47</p>

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<p style="text-align: right;">26</p> <p>1 DICARLO</p> <p>2 mentioned. 10:22:49</p> <p>3 Q. And based on your direct 10:22:49</p> <p>4 dealings, how would you describe his work 10:22:51</p> <p>5 performance? 10:22:53</p> <p>6 A. It was good. 10:22:53</p> <p>7 Q. Now, did there come a time when 10:22:54</p> <p>8 Mr. Fried became the interim CEO of LVI 10:22:56</p> <p>9 Services? 10:23:00</p> <p>10 A. I don't know if that was his 10:23:00</p> <p>11 title, but there was a time after Bob 10:23:05</p> <p>12 McNamara left that Burt became president 10:23:08</p> <p>13 or CEO again. 10:23:12</p> <p>14 Q. Okay. Do you know why Mr. Fried 10:23:14</p> <p>15 became president or CEO again? 10:23:17</p> <p>16 A. I do not. 10:23:21</p> <p>17 Q. Okay. Do you know who asked 10:23:22</p> <p>18 him? Do you know if anyone asked him to be 10:23:26</p> <p>19 the president or CEO again? 10:23:28</p> <p>20 A. I don't know. 10:23:30</p> <p>21 Q. Do you know what job duties Mr. 10:23:31</p> <p>22 Fried performed when he was the president 10:23:35</p> <p>23 or CEO again? 10:23:37</p> <p>24 A. I believe he performed the 10:23:39</p> <p>25 duties of running the business again in 10:23:42</p>	<p style="text-align: right;">28</p> <p>1 DICARLO</p> <p>2 A. Yes. 10:24:39</p> <p>3 Q. Now, while Mr. Fried was the CEO 10:24:40</p> <p>4 and president again of LVI Services, did 10:24:49</p> <p>5 you feel that he was interfering with your 10:24:51</p> <p>6 ability to do your job? 10:24:53</p> <p>7 A. No. 10:24:54</p> <p>8 Q. During the same period of type, 10:24:55</p> <p>9 did you feel that he was stepping on your 10:24:58</p> <p>10 toes? 10:24:59</p> <p>11 A. No. 10:24:59</p> <p>12 Q. Now, while Mr. Fried was the 10:25:00</p> <p>13 president and CEO again of LVI Services, 10:25:06</p> <p>14 do you have personal knowledge of his work 10:25:09</p> <p>15 performance? 10:25:11</p> <p>16 A. Only with respect to what I 10:25:12</p> <p>17 worked with him on. 10:25:17</p> <p>18 Q. And based on your dealings with 10:25:18</p> <p>19 Mr. Fried, how would you describe his work 10:25:19</p> <p>20 performance? 10:25:22</p> <p>21 A. Good. 10:25:23</p> <p>22 Q. Now, while Mr. Fried was the 10:25:27</p> <p>23 president and CEO again of LVI Services, 10:25:29</p> <p>24 was the company searching for a permanent 10:25:33</p> <p>25 CEO? 10:25:36</p>
<p style="text-align: right;">27</p> <p>1 DICARLO</p> <p>2 its entirety. 10:23:45</p> <p>3 Q. And did he also keep his prior 10:23:46</p> <p>4 job duties that he had as chairman? 10:23:50</p> <p>5 A. I don't know. 10:23:53</p> <p>6 Q. Now, while Mr. Fried was the CEO 10:23:54</p> <p>7 and president again, were you still 10:24:02</p> <p>8 counsel? 10:24:05</p> <p>9 A. Yes. 10:24:06</p> <p>10 Q. And did you still continue to 10:24:06</p> <p>11 report to Mr. Fried? 10:24:10</p> <p>12 A. Yes. 10:24:11</p> <p>13 Q. Were your job duties still the 10:24:12</p> <p>14 same? 10:24:17</p> <p>15 A. Yes. 10:24:17</p> <p>16 Q. And while Mr. Fried was the 10:24:18</p> <p>17 president and CEO, did your working 10:24:21</p> <p>18 relationship with him change in any way? 10:24:26</p> <p>19 A. No. 10:24:28</p> <p>20 Q. Were you still working on legal 10:24:29</p> <p>21 matters together during this time period? 10:24:30</p> <p>22 A. Yes. 10:24:32</p> <p>23 Q. Were you -- did you continue to 10:24:32</p> <p>24 seek advice from Mr. Fried on certain 10:24:37</p> <p>25 matters? 10:24:39</p>	<p style="text-align: right;">29</p> <p>1 DICARLO</p> <p>2 A. That was my understanding, yes. 10:25:37</p> <p>3 Q. Do you know why? 10:25:38</p> <p>4 A. I do not. 10:25:39</p> <p>5 Q. Do you know what Mr. Fried 10:25:40</p> <p>6 planned to do after the company found a 10:25:43</p> <p>7 permanent CEO? 10:25:44</p> <p>8 A. No. 10:25:46</p> <p>9 Q. Do you know if he planned to 10:25:53</p> <p>10 return to his former role? 10:25:54</p> <p>11 A. I don't know. 10:25:56</p> <p>12 Q. Now, while Mr. Fried was the 10:25:57</p> <p>13 president and CEO of LVI Services for a 10:26:05</p> <p>14 second time, did you have any 10:26:08</p> <p>15 conversations or e-mail communications 10:26:10</p> <p>16 with anyone at LVI Services about Mr. 10:26:12</p> <p>17 Fried's job duties or his role at LVI? 10:26:16</p> <p>18 MS. SELTZER: I object to the 10:26:18</p> <p>19 form, but you can answer. 10:26:19</p> <p>20 A. Give me the time frame one more 10:26:20</p> <p>21 time? I am sorry. 10:26:22</p> <p>22 Q. While Mr. Fried was the CEO and 10:26:24</p> <p>23 president of LVI Services for the second 10:26:27</p> <p>24 time, did you have any conversations or 10:26:29</p> <p>25 e-mail communications with anyone about 10:26:32</p>

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<p style="text-align: right;">38</p> <p>1 DICARLO</p> <p>2 was run through Burt. 10:35:06</p> <p>3 Q. And did you speak to Mr. State 10:35:07</p> <p>4 prior to your appointment to general 10:35:09</p> <p>5 counsel about your role at LVI? 10:35:11</p> <p>6 A. No. 10:35:15</p> <p>7 Q. When was the first time that you 10:35:32</p> <p>8 spoke to Mr. State about your role at LVI? 10:35:34</p> <p>9 MS. SELTZER: Objection to 10:35:36</p> <p>10 form. 10:35:37</p> <p>11 A. I don't recall speaking to Mr. 10:35:37</p> <p>12 State about my role at LVI. 10:35:39</p> <p>13 Q. When -- I believe you testified 10:35:41</p> <p>14 that Mr. State told you that you were to 10:35:42</p> <p>15 report to him? 10:35:44</p> <p>16 A. No, he didn't. I was told by 10:35:52</p> <p>17 John Leonard that Mr. State said I should 10:35:53</p> <p>18 report to him. 10:35:56</p> <p>19 Q. Okay. Did you ever have any 10:35:56</p> <p>20 conversations with Mr. State about your 10:35:58</p> <p>21 job duties? 10:35:59</p> <p>22 MS. SELTZER: Objection. Asked 10:36:00</p> <p>23 and answered. 10:36:01</p> <p>24 A. No. 10:36:02</p> <p>25 Q. To this day? 10:36:03</p>	<p style="text-align: right;">40</p> <p>1 DICARLO</p> <p>2 MS. SELTZER: I object to the 10:37:11</p> <p>3 form. 10:37:12</p> <p>4 A. Ideal. I don't know about 10:37:12</p> <p>5 ideal. I -- subjective term. I could 10:37:14</p> <p>6 have worked with either of them as they 10:37:21</p> <p>7 saw fit as long as I had clear direction. 10:37:26</p> <p>8 Q. Okay. But neither Mr. Fried nor 10:37:29</p> <p>9 Mr. State gave you that direction; is that 10:37:31</p> <p>10 correct? 10:37:33</p> <p>11 A. The direction I received was 10:37:38</p> <p>12 through John Leonard that I was to report 10:37:40</p> <p>13 directly to Scott State. 10:37:43</p> <p>14 Q. And did Mr. Fried ever tell you 10:37:44</p> <p>15 to report directly to him during this 10:37:46</p> <p>16 period of time that you were appointed 10:37:48</p> <p>17 general counsel? 10:37:51</p> <p>18 A. No, he never indicated that, but 10:37:52</p> <p>19 he did continue to require my input of my 10:37:54</p> <p>20 keeping him in the loop on several 10:38:03</p> <p>21 matters. 10:38:05</p> <p>22 Q. So was -- 10:38:05</p> <p>23 A. A variety of matters. 10:38:06</p> <p>24 Q. Was Mr. Fried conducting 10:38:08</p> <p>25 business as usual -- 10:38:13</p>
<p style="text-align: right;">39</p> <p>1 DICARLO</p> <p>2 A. To this day. 10:36:05</p> <p>3 Q. Now, while -- after Mr. State 10:36:06</p> <p>4 was hired and before you were appointed 10:36:17</p> <p>5 general counsel, did you feel that Mr. 10:36:19</p> <p>6 Fried was interfering with your ability to 10:36:21</p> <p>7 do your job? 10:36:22</p> <p>8 A. No, it was business as usual. 10:36:23</p> <p>9 Q. Okay. During that period of 10:36:25</p> <p>10 time? 10:36:31</p> <p>11 A. Correct. 10:36:31</p> <p>12 Q. Now, after you became general 10:36:32</p> <p>13 counsel, did you feel that Mr. Fried was 10:36:33</p> <p>14 interfering with your ability to do your 10:36:36</p> <p>15 job? 10:36:38</p> <p>16 A. I don't feel he was interfering 10:36:38</p> <p>17 with my ability to do my job. I feel the 10:36:45</p> <p>18 conflict that had arisen between Burt and 10:36:48</p> <p>19 Scott State was causing me confusion as to 10:36:51</p> <p>20 the proper reporting relationships and the 10:36:55</p> <p>21 level of involvement each of them should 10:36:58</p> <p>22 have in any particular matter. 10:37:00</p> <p>23 Q. Okay. And would it have been 10:37:01</p> <p>24 ideal for you if the two of them worked it 10:37:07</p> <p>25 out? 10:37:10</p>	<p style="text-align: right;">41</p> <p>1 DICARLO</p> <p>2 MS. SELTZER: I object to the 10:38:14</p> <p>3 form. 10:38:16</p> <p>4 Q. -- with respect to your working 10:38:16</p> <p>5 relationship? 10:38:17</p> <p>6 MS. SELTZER: I object to the 10:38:18</p> <p>7 form. 10:38:19</p> <p>8 A. It -- it was business as usual 10:38:23</p> <p>9 but maybe a little more involvement than I 10:38:25</p> <p>10 was used to by Mr. Fried. 10:38:31</p> <p>11 Q. Would it have been the same 10:38:33</p> <p>12 level of involvement as when Mr. Fried was 10:38:35</p> <p>13 chairman the first time? 10:38:39</p> <p>14 A. For the most part with at least 10:38:40</p> <p>15 one exception I could think of, yes. 10:38:43</p> <p>16 Q. And what exception is that? 10:38:46</p> <p>17 A. The exception was that -- that I 10:38:48</p> <p>18 found very unusual was shortly after I was 10:38:51</p> <p>19 appointed general counsel Mr. Fried 10:38:54</p> <p>20 e-mailed me that he wanted to be copied on 10:38:59</p> <p>21 all comments I made to contracts. In 10:39:03</p> <p>22 other words, I would review a contract. I 10:39:08</p> <p>23 would put together a list of comments, and 10:39:10</p> <p>24 I would e-mail those to the appropriate 10:39:12</p> <p>25 branch and regional managers. Burt asked 10:39:14</p>

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<p style="text-align: right;">50</p> <p>1 DICARLO</p> <p>2 had heard had happened during the portions 10:53:52</p> <p>3 when he was not present. 10:53:55</p> <p>4 Q. Okay. How long -- do you know 10:53:57</p> <p>5 how long after the board meeting did Mr. 10:54:01</p> <p>6 Fried mention to you that Mr. State made a 10:54:02</p> <p>7 comment about his age? 10:54:04</p> <p>8 A. I don't recall if it was shortly 10:54:05</p> <p>9 thereafter. I don't remember. 10:54:09</p> <p>10 Q. After -- after hearing what Mr. 10:54:11</p> <p>11 Fried told you, did you investigate? 10:54:15</p> <p>12 MS. SELTZER: Can I put in an 10:54:19</p> <p>13 objection here? As you know, Mr. DiCarlo 10:54:21</p> <p>14 is general counsel. 10:54:23</p> <p>15 MR. DATOO: Yes. 10:54:25</p> <p>16 MS. SELTZER: So if there were 10:54:26</p> <p>17 any activities that you took on on behalf 10:54:27</p> <p>18 of the company as general counsel in 10:54:29</p> <p>19 preparation for litigation, you're not to 10:54:31</p> <p>20 disclose those. 10:54:33</p> <p>21 MR. DATOO: Well, I am just 10:54:37</p> <p>22 asking if he investigated. I don't want 10:54:38</p> <p>23 to know -- 10:54:39</p> <p>24 MS. SELTZER: Yes, but I mean 10:54:40</p> <p>25 if that was part and parcel of what he was 10:54:41</p>	<p style="text-align: right;">52</p> <p>1 DICARLO</p> <p>2 MR. DATOO: Yes. 10:55:53</p> <p>3 MS. SELTZER: Right. Okay. 10:55:54</p> <p>4 A. The way it was described to me 10:55:55</p> <p>5 was that Burt accused Mr. State of making 10:56:01</p> <p>6 the statement I described earlier about 10:56:08</p> <p>7 his age and that he accused Mr. State of 10:56:10</p> <p>8 age discrimination, and that I think the 10:56:15</p> <p>9 only thing John said was that there was a 10:56:20</p> <p>10 blow up about it among the board, and he 10:56:22</p> <p>11 didn't have any more detail than that 10:56:25</p> <p>12 because I don't believe John was in the 10:56:28</p> <p>13 room at the time that was discussed. 10:56:29</p> <p>14 Q. Did you hear what happened at 10:56:32</p> <p>15 the board meeting from anybody else? 10:56:34</p> <p>16 A. No. 10:56:37</p> <p>17 A. Well, I should correct that and 10:56:48</p> <p>18 say I did have discussions, but I -- I 10:56:51</p> <p>19 would classify them as attorney-client 10:56:53</p> <p>20 privileged communications. 10:56:56</p> <p>21 Q. And who did you have the 10:56:56</p> <p>22 discussions with? 10:56:58</p> <p>23 A. Scott State. 10:56:59</p> <p>24 Q. And when did you have that 10:56:59</p> <p>25 discussion? 10:57:00</p>
<p style="text-align: right;">51</p> <p>1 DICARLO</p> <p>2 doing as a general counsel for the 10:54:43</p> <p>3 company, then he should really not talk 10:54:46</p> <p>4 about what he did with respect to that 10:54:49</p> <p>5 investigation. 10:54:51</p> <p>6 MR. DATOO: I don't want to 10:54:51</p> <p>7 know what he did. I just want to know 10:54:53</p> <p>8 whether he investigated or not. 10:54:55</p> <p>9 MS. SELTZER: Okay. 10:54:57</p> <p>10 A. I -- I wouldn't say I 10:55:01</p> <p>11 investigated it, but I did discuss it with 10:55:04</p> <p>12 John Leonard and was told that the company 10:55:06</p> <p>13 is aware of Burt's concern because he had 10:55:12</p> <p>14 made it clear at the board meeting of his 10:55:15</p> <p>15 allegation of age discrimination, and I 10:55:17</p> <p>16 believe counsel was already engaged at 10:55:25</p> <p>17 that point to handle it. 10:55:27</p> <p>18 Q. Now, what did Mr. Leonard tell 10:55:34</p> <p>19 you about the November -- about what 10:55:36</p> <p>20 happened at the November 4 meeting to 10:55:38</p> <p>21 the -- and I am not asking you to disclose 10:55:42</p> <p>22 any attorney-client communications you had 10:55:46</p> <p>23 with him. 10:55:48</p> <p>24 MS. SELTZER: So you just want 10:55:49</p> <p>25 the factual things that John told him? 10:55:50</p>	<p style="text-align: right;">53</p> <p>1 DICARLO</p> <p>2 A. I believe it was December 3. 10:57:01</p> <p>3 Q. Okay. Did you hear anything 10:57:06</p> <p>4 else about what happened at the November 4 10:57:13</p> <p>5 meeting from anybody? 10:57:16</p> <p>6 A. No. 10:57:17</p> <p>7 Q. Okay. Did you speak to Mr. 10:57:19</p> <p>8 Fried after the November 4 board 10:57:25</p> <p>9 meeting -- 10:57:27</p> <p>10 MS. SELTZER: Other than -- 10:57:29</p> <p>11 Q. -- about what happened? 10:57:30</p> <p>12 MS. SELTZER: Other than what 10:57:32</p> <p>13 he has already testified to? 10:57:33</p> <p>14 MR. DATOO: Correct. 10:57:34</p> <p>15 A. About what happened at the board 10:57:35</p> <p>16 meeting? 10:57:37</p> <p>17 Q. Yes. 10:57:38</p> <p>18 A. No. 10:57:38</p> <p>19 MR. DATOO: Okay. I am 10:57:45</p> <p>20 probably just going to have to -- can we 10:57:46</p> <p>21 go off? 10:57:48</p> <p>22 THE VIDEOGRAPHER: We're going 10:57:49</p> <p>23 off the record. The time is 10:57 a.m. 10:57:49</p> <p>24 (Recess taken.) 10:59:34</p> <p>25 THE VIDEOGRAPHER: We're 10:59:42</p>

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<p style="text-align: right;">62</p> <p>1 DICARLO</p> <p>2 MS. SELTZER: It has arrived, 11:21:11</p> <p>3 so -- 11:21:15</p> <p>4 MR. DATOO: Okay. Well, let me 11:21:16</p> <p>5 just finish up with this. 11:21:19</p> <p>6 MS. SELTZER: Okay. 11:21:20</p> <p>7 Q. If you look at the second page, 11:21:21</p> <p>8 Burt says -- Burt writes: "Please copy me 11:21:23</p> <p>9 on all of your e-mails containing your 11:21:28</p> <p>10 comments to the contract provisions bonded 11:21:30</p> <p>11 on -- and on bonded after your review if 11:21:32</p> <p>12 you have not discussed your comments 11:21:36</p> <p>13 previously with me and advise me of the 11:21:38</p> <p>14 replies." 11:21:40</p> <p>15 So Mr. Fried wanted you to copy 11:21:42</p> <p>16 him, correct? 11:21:44</p> <p>17 A. Correct. 11:21:46</p> <p>18 Q. And that is only if you didn't 11:21:46</p> <p>19 discuss any of your comments that you made 11:21:51</p> <p>20 with him previously, correct? 11:21:55</p> <p>21 A. Correct. 11:21:56</p> <p>22 Q. And he wanted you to advise him 11:21:57</p> <p>23 of any replies to your comments, correct? 11:22:00</p> <p>24 A. Correct. 11:22:02</p> <p>25 Q. And would that just be keeping 11:22:03</p>	<p style="text-align: right;">64</p> <p>1 DICARLO</p> <p>2 redacted, you know, I can't really tell 11:23:32</p> <p>3 what was going on in here, but was Mr. 11:23:34</p> <p>4 Fried by virtue of this e-mail asking you 11:23:37</p> <p>5 to report to him or just run things by 11:23:39</p> <p>6 him? 11:23:42</p> <p>7 A. First of all, this was not 11:23:42</p> <p>8 anything to do with a casino. I don't 11:23:49</p> <p>9 know if you think that is related, but it 11:23:52</p> <p>10 is not. 11:23:54</p> <p>11 Q. I am not -- 11:23:54</p> <p>12 A. I just want to make that clear 11:23:56</p> <p>13 because I wasn't sure if there was a 11:23:58</p> <p>14 connection there. 11:23:59</p> <p>15 Q. No, I was -- earlier on I was 11:24:00</p> <p>16 asking whether Mr. Fried sent you this 11:24:02</p> <p>17 e-mail because of an error that was made 11:24:04</p> <p>18 in connection with a casino -- a 11:24:07</p> <p>19 demolition project for a casino. 11:24:11</p> <p>20 A. The answer is emphatically no. 11:24:12</p> <p>21 Q. I am sorry? 11:24:15</p> <p>22 A. Emphatically no. 11:24:16</p> <p>23 Q. To what question? 11:24:18</p> <p>24 A. To the question of whether this 11:24:19</p> <p>25 e-mail was made in relation to a mistake 11:24:20</p>
<p style="text-align: right;">63</p> <p>1 DICARLO</p> <p>2 Mr. Fried in the loop? 11:22:09</p> <p>3 A. It was highly unusual in our 11:22:10</p> <p>4 relationship and the method under which we 11:22:15</p> <p>5 worked prior to this e-mail. I did not 11:22:20</p> <p>6 copy Burt on my contract comments, and I 11:22:26</p> <p>7 had not for five plus years. I dealt with 11:22:28</p> <p>8 them myself. I went to Burt or copied 11:22:33</p> <p>9 Burt on the select few where we were 11:22:37</p> <p>10 unable to negotiate or I or management 11:22:40</p> <p>11 without Burt's input was unable to 11:22:44</p> <p>12 negotiate an acceptable resolution to a 11:22:47</p> <p>13 problematic provision, and I when I say 11:22:50</p> <p>14 acceptable I mean within the parameters 11:22:52</p> <p>15 that had evolved over the course of my 11:22:55</p> <p>16 time working with Burt. I had -- I had an 11:22:59</p> <p>17 idea or a clear idea of what was 11:23:02</p> <p>18 acceptable and what we could negotiate up 11:23:05</p> <p>19 to a point. If I was unable to get it 11:23:07</p> <p>20 negotiated to within those parameters, I 11:23:09</p> <p>21 would go to Burt. It was a very small 11:23:15</p> <p>22 percentage of all the contracts I reviewed 11:23:18</p> <p>23 that I would run by Burt, so this was 11:23:20</p> <p>24 highly unusual. 11:23:29</p> <p>25 Q. Now, because most of this was 11:23:30</p>	<p style="text-align: right;">65</p> <p>1 DICARLO</p> <p>2 being made on a contract with respect to a 11:24:23</p> <p>3 casino. This neither relates to a casino 11:24:24</p> <p>4 nor a mistake made in the contract, this 11:24:28</p> <p>5 e-mail. 11:24:31</p> <p>6 Q. No, I'm not talking about the 11:24:31</p> <p>7 e-mail chain. I am talking specifically 11:24:33</p> <p>8 about what Mr. Fried wrote in this e-mail, 11:24:35</p> <p>9 whether it was in response to an error or 11:24:38</p> <p>10 to an oversight made in connection with a 11:24:40</p> <p>11 contract for the demolition of a casino. 11:24:43</p> <p>12 A. And the answer is no. 11:24:45</p> <p>13 Q. Okay. 11:24:47</p> <p>14 A. No. 11:24:47</p> <p>15 Q. Now, as I said -- as I was 11:24:48</p> <p>16 saying earlier, did Mr. Fried tell you to 11:24:53</p> <p>17 report to him? 11:24:57</p> <p>18 A. He did not. 11:24:57</p> <p>19 Q. Okay. And was Mr. Fried making 11:24:59</p> <p>20 recommendations as to what provisions 11:25:04</p> <p>21 should be included in this contract or 11:25:08</p> <p>22 what should be negotiated? 11:25:12</p> <p>23 A. Yes. 11:25:14</p> <p>24 Q. And who was making the final 11:25:15</p> <p>25 decisions on what goes in the contract and 11:25:16</p>

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<p>1 DICARLO</p> <p>2 second page of that document, and if you 11:35:21</p> <p>3 look to the second full paragraph above 11:35:22</p> <p>4 the word Scott. Do you see that? 11:35:24</p> <p>5 A. Yes. 11:35:26</p> <p>6 Q. Okay. If I can draw your 11:35:27</p> <p>7 attention to the second sentence in the 11:35:28</p> <p>8 second full paragraph, it reads: "Most 11:35:31</p> <p>9 troublesome is that he is just stepping 11:35:34</p> <p>10 all over our new general counsel, Greg 11:35:37</p> <p>11 DiCarlo, which tends to marginalize Greg 11:35:41</p> <p>12 at a time when I need him to step up." 11:35:43</p> <p>13 Now, was Mr. Fried stepping all 11:35:52</p> <p>14 over you at this point in time? 11:35:54</p> <p>15 MS. SELTZER: I object to the 11:35:57</p> <p>16 form. 11:35:58</p> <p>17 A. I wouldn't use the words 11:35:58</p> <p>18 stepping all over, no. I would say it was 11:36:06</p> <p>19 business as usual, meaning as it had been 11:36:08</p> <p>20 for the entirety of the time I had been 11:36:15</p> <p>21 with LVI up to that point. What was 11:36:18</p> <p>22 happening, as I said, was there was 11:36:21</p> <p>23 confusion on my part about reporting 11:36:24</p> <p>24 relationships and the authority of both 11:36:32</p> <p>25 Scott and Burt to direct my activities. 11:36:36</p>	<p>1 DICARLO</p> <p>2 was talking about when he said Mr. Fried 11:37:39</p> <p>3 was just stepping all over you? 11:37:42</p> <p>4 A. No, not specifically. 11:37:43</p> <p>5 Q. And did you feel marginalized at 11:37:45</p> <p>6 this point in time? 11:37:49</p> <p>7 A. I don't think I felt 11:37:50</p> <p>8 marginalized. Confused. 11:37:53</p> <p>9 Q. Do you know what Mr. State was 11:37:55</p> <p>10 talking about when he wrote it tends to 11:37:58</p> <p>11 marginalize you? 11:38:02</p> <p>12 A. I don't. 11:38:03</p> <p>13 Q. Okay. Did there come a time 11:38:03</p> <p>14 when Mr. Fried was terminated? 11:38:46</p> <p>15 A. I know there was a time when Mr. 11:38:48</p> <p>16 Fried left. I am not entirely clear on 11:38:58</p> <p>17 whether it was a termination or not. 11:39:00</p> <p>18 Q. Okay. 11:39:02</p> <p>19 A. Or a voluntary departure. 11:39:03</p> <p>20 Q. Did you ever have a conversation 11:39:09</p> <p>21 with Mr. Fried in which he told you he was 11:39:11</p> <p>22 separating from the company? 11:39:13</p> <p>23 A. He -- he must have said 11:39:15</p> <p>24 something to me prior to leaving. I know 11:39:20</p> <p>25 he just didn't walk out, but I don't have 11:39:22</p>
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<p>1 DICARLO</p> <p>2 Q. Now, at this point in time, was 11:36:41</p> <p>3 there confusion about your reporting 11:36:43</p> <p>4 relationship? 11:36:47</p> <p>5 A. Well, because Scott wrote this 11:36:48</p> <p>6 e-mail on October 29, it is clear to me 11:36:55</p> <p>7 that I had had at least some conversation 11:37:01</p> <p>8 with John Leonard up to this point where I 11:37:02</p> <p>9 expressed that confusion over the 11:37:07</p> <p>10 reporting relationship of being unsure of 11:37:09</p> <p>11 how I should handle direction from Burt 11:37:11</p> <p>12 versus Scott. 11:37:14</p> <p>13 Q. And this was prior to the e-mail 11:37:15</p> <p>14 that Mr. Fried sent you on November 1, 11:37:18</p> <p>15 correct? 11:37:20</p> <p>16 A. It is indeed. 11:37:21</p> <p>17 Q. Okay. So what resulted in your 11:37:22</p> <p>18 confusion? 11:37:24</p> <p>19 A. I don't have any memory of what 11:37:27</p> <p>20 the specific issues were that gave rise to 11:37:30</p> <p>21 that -- 11:37:34</p> <p>22 Q. Okay. 11:37:34</p> <p>23 A. -- in that two or three-day time 11:37:35</p> <p>24 frame. 11:37:37</p> <p>25 Q. So do you know what Mr. State 11:37:38</p>	<p>1 DICARLO</p> <p>2 a specific recollection of a conversation. 11:39:24</p> <p>3 Q. Do you recall speaking with Mr. 11:39:25</p> <p>4 Fried at the Westport office while 11:39:27</p> <p>5 Ms. Shari Dembin was present? 11:39:32</p> <p>6 A. I don't recall. 11:39:34</p> <p>7 Q. Okay. Do you know -- 11:39:38</p> <p>8 MR. DATOO: Strike that. 11:39:46</p> <p>9 Q. You testified that you don't 11:39:47</p> <p>10 know if Mr. Fried was terminated or he 11:39:49</p> <p>11 left voluntarily? 11:39:52</p> <p>12 A. Correct. 11:39:53</p> <p>13 Q. Okay. Do you know if he was 11:39:54</p> <p>14 terminated as an employee of LVI? 11:39:57</p> <p>15 A. I am not entirely sure. 11:40:00</p> <p>16 Q. Okay. 11:40:05</p> <p>17 MS. SELTZER: Go ahead. 11:40:07</p> <p>18 Q. Do you know when Mr. 11:40:08</p> <p>19 Fried -- Mr. Fried's last day at work was? 11:40:23</p> <p>20 A. I believe it was November 30. 11:40:26</p> <p>21 Q. Okay. 11:40:29</p> <p>22 A. 2010. 11:40:30</p> <p>23 Q. And in between the time Mr. 11:40:31</p> <p>24 Fried sent you the e-mail on November 1 11:40:35</p> <p>25 and November 30, 2010, did you have a 11:40:39</p>

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<p style="text-align: right;">82</p> <p>1 DICARLO</p> <p>2 MS. SELTZER: Over -- over the 11:44:46</p> <p>3 period that Scott State was -- 11:44:48</p> <p>4 MR. DATOO: No, over the period 11:44:50</p> <p>5 that Mr. DiCarlo was referring to. 11:44:51</p> <p>6 MS. SELTZER: So the entire 11:44:53</p> <p>7 period that Mr. Fried was in the Westport 11:44:54</p> <p>8 office is what you are saying? 11:44:56</p> <p>9 MR. DATOO: It is -- 11:44:58</p> <p>10 A. It was -- it was infrequent that 11:44:59</p> <p>11 he wouldn't be there, although he was out 11:45:01</p> <p>12 of the office more often during the time 11:45:04</p> <p>13 he came back on as president and CEO. 11:45:08</p> <p>14 After McNamara left before Scott came on 11:45:11</p> <p>15 when Burt took on running the company 11:45:14</p> <p>16 again, he tended to be out of the office a 11:45:16</p> <p>17 bit more. I know he traveled to England 11:45:19</p> <p>18 at one point relating to business. He 11:45:21</p> <p>19 certainly traveled with me on several 11:45:26</p> <p>20 occasions -- a number of occasions to 11:45:28</p> <p>21 Mississippi, to New Orleans, to 11:45:31</p> <p>22 Washington. We went to a number of places 11:45:35</p> <p>23 regarding, you know, litigated matters 11:45:37</p> <p>24 that we traveled on. 11:45:40</p> <p>25 Q. Do you know if Mr. Fried spent 11:45:41</p>	<p style="text-align: right;">84</p> <p>1 DICARLO</p> <p>2 of at the moment. 11:47:06</p> <p>3 Q. Okay. And as part of securing 11:47:07</p> <p>4 these -- the MSG contract, would Mr. Fried 11:47:09</p> <p>5 have to -- would Mr. Fried travel in to 11:47:12</p> <p>6 New York to attempt to secure that 11:47:15</p> <p>7 contract? 11:47:18</p> <p>8 A. I -- I know of it at least -- of 11:47:19</p> <p>9 two certainly occasions when he did travel 11:47:22</p> <p>10 to New York. One was during the 11:47:24</p> <p>11 negotiation process for a meeting where 11:47:27</p> <p>12 they had some concerns about LVI, and Burt 11:47:32</p> <p>13 went to allay those concerns, and I know 11:47:34</p> <p>14 he went to Turner's office in New York 11:47:38</p> <p>15 City to execute the contract in person. 11:47:42</p> <p>16 Q. And do you recall when this was? 11:47:45</p> <p>17 A. I believe the MSG contract was 11:47:47</p> <p>18 executed I think it was in June 2010. 11:47:51</p> <p>19 Q. And is that contract still being 11:48:02</p> <p>20 performed? 11:48:03</p> <p>21 A. Yes. 11:48:04</p> <p>22 Q. What is the size of that 11:48:04</p> <p>23 contract? 11:48:05</p> <p>24 A. Dollar value? 11:48:06</p> <p>25 Q. Yes. 11:48:06</p>
<p style="text-align: right;">83</p> <p>1 DICARLO</p> <p>2 any time in the the New York City office 11:45:43</p> <p>3 of LVI? 11:45:45</p> <p>4 A. Once Bob McNamara came on board 11:45:46</p> <p>5 I am not aware of Burt spending any time 11:45:51</p> <p>6 there. 11:45:54</p> <p>7 Q. How about when Mr. Fried 11:45:54</p> <p>8 was -- became president and CEO for the 11:46:03</p> <p>9 second time? 11:46:05</p> <p>10 A. Not that I am aware. 11:46:05</p> <p>11 Q. Do you know if Mr. Fried tried 11:46:07</p> <p>12 to secure contracts for LVI throughout 11:46:15</p> <p>13 his -- his time at LVI? 11:46:20</p> <p>14 A. Yes. 11:46:22</p> <p>15 Q. And did he secure a lot of 11:46:23</p> <p>16 contracts in New York City? 11:46:26</p> <p>17 A. Define a lot. 11:46:27</p> <p>18 Q. Did he secure any contracts in 11:46:35</p> <p>19 New York City? 11:46:36</p> <p>20 A. Yes. 11:46:37</p> <p>21 Q. How many approximately? 11:46:37</p> <p>22 A. MSG. I am not entirely sure of 11:46:38</p> <p>23 his involvement on 130 Liberty or if Bob 11:46:50</p> <p>24 McNamara drove that more than Burt in '07, 11:46:53</p> <p>25 '08. Those -- those are what I can think 11:46:57</p>	<p style="text-align: right;">85</p> <p>1 DICARLO</p> <p>2 A. Approximately 27 million 11:48:07</p> <p>3 dollars. 11:48:08</p> <p>4 Q. Is that considered a large 11:48:08</p> <p>5 contract? 11:48:10</p> <p>6 A. It is. 11:48:11</p> <p>7 Q. Is that LVI's largest contract? 11:48:11</p> <p>8 MS. SELTZER: Objection. 11:48:15</p> <p>9 During which period of time? 11:48:16</p> <p>10 Q. During 2010. 11:48:18</p> <p>11 A. It is the largest one I am aware 11:48:19</p> <p>12 of. 11:48:24</p> <p>13 Q. Okay. 11:48:25</p> <p>14 A. Yes. 11:48:26</p> <p>15 Q. And do you know if Mr. Fried was 11:48:26</p> <p>16 involved in securing the 130 Liberty 11:48:29</p> <p>17 contract? 11:48:32</p> <p>18 A. My understanding is that when we 11:48:32</p> <p>19 had initially negotiated for that job in 11:48:39</p> <p>20 the fall of 2005 Burt was primarily 11:48:42</p> <p>21 involved in 2005 with this negotiation, 11:48:49</p> <p>22 and I assisted him with that. LVI could 11:48:53</p> <p>23 not come to terms at that time, and we 11:48:58</p> <p>24 walked away from the job. In 2007 after 11:49:02</p> <p>25 the fire at 130 Liberty and the 11:49:09</p>

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<p style="text-align: right;">86</p> <p>1 DICARLO</p> <p>2 termination of the contractor that was 11:49:12</p> <p>3 hired to do the work, there were 11:49:14</p> <p>4 negotiations again. 11:49:17</p> <p>5 My understanding is that Bob 11:49:18</p> <p>6 McNamara I would say would have been more 11:49:20</p> <p>7 involved than Burt in that negotiation if 11:49:24</p> <p>8 not almost exclusively, and I think 11:49:29</p> <p>9 he -- he even negotiated that contract and 11:49:35</p> <p>10 had it drafted up without my involvement 11:49:37</p> <p>11 at all. I never even saw that contract 11:49:39</p> <p>12 until after it was executed. 11:49:43</p> <p>13 Q. So now in connection with 11:49:44</p> <p>14 securing contracts, would it be common to 11:49:51</p> <p>15 travel to the site of where -- 11:49:58</p> <p>16 MR. DATOO: Strike that. 11:50:00</p> <p>17 Q. Is the MSG contract still 11:50:02</p> <p>18 currently ongoing? 11:50:06</p> <p>19 A. Yes. 11:50:07</p> <p>20 Q. And how many employees are 11:50:08</p> <p>21 working at MSG? 11:50:10</p> <p>22 A. I have no idea. 11:50:13</p> <p>23 Q. Do you know if it is -- do you 11:50:14</p> <p>24 have any idea? 11:50:16</p> <p>25 A. None. 11:50:16</p>	<p style="text-align: right;">88</p> <p>1 DICARLO</p> <p>2 could think of. 11:51:27</p> <p>3 Q. Okay. And in instances where 11:51:28</p> <p>4 someone was unsuccessful in securing 11:51:31</p> <p>5 contracts, would that result in travel? 11:51:34</p> <p>6 MS. SELTZER: I object to the 11:51:41</p> <p>7 form. 11:51:42</p> <p>8 A. It is possible. It is possible. 11:51:43</p> <p>9 Q. Okay. Are you familiar with 11:51:44</p> <p>10 Shari Dembin? 11:51:46</p> <p>11 A. Yes. 11:51:47</p> <p>12 Q. How so? 11:51:48</p> <p>13 A. She is Burt's daughter and was a 11:51:49</p> <p>14 coworker of mine in the Westport office 11:51:52</p> <p>15 for the entirety of the time I was there 11:51:55</p> <p>16 up until mid-January 2011. 11:51:58</p> <p>17 Q. And do you know how long she was 11:52:05</p> <p>18 employed by LVI? 11:52:07</p> <p>19 A. I believe it was fifteen or 11:52:08</p> <p>20 sixteen years. 11:52:09</p> <p>21 Q. And did she work at the Westport 11:52:10</p> <p>22 office the entire time you were there? 11:52:12</p> <p>23 A. Yes. 11:52:14</p> <p>24 Q. Do you know if she worked in 11:52:14</p> <p>25 another office prior to the Westport 11:52:16</p>
<p style="text-align: right;">87</p> <p>1 DICARLO</p> <p>2 Q. Okay. Do you know of any other 11:50:17</p> <p>3 contracts that Mr. Fried secured for LVI 11:50:24</p> <p>4 or assisted in securing? 11:50:27</p> <p>5 MS. SELTZER: Throughout his 11:50:30</p> <p>6 entire period of employment? 11:50:31</p> <p>7 MR. DATOO: Yes, through Mr. 11:50:32</p> <p>8 DiCarlo's entire period of employment. 11:50:35</p> <p>9 A. None come to mind, but I -- I 11:50:37</p> <p>10 have a sense that there were others. 11:50:43</p> <p>11 Q. Okay. In New York City? 11:50:45</p> <p>12 A. Not necessarily specific to New 11:50:47</p> <p>13 York City, but certainly he was active in 11:50:49</p> <p>14 negotiating work on an ongoing basis 11:50:54</p> <p>15 throughout the country. 11:50:58</p> <p>16 Q. And when he did that, would he 11:50:59</p> <p>17 remain at the Westport office or would he 11:51:00</p> <p>18 travel? 11:51:03</p> <p>19 A. I suppose it varied depending on 11:51:03</p> <p>20 the need for him to be personally present 11:51:06</p> <p>21 somewhere. 11:51:09</p> <p>22 Q. Do you know if there were any 11:51:09</p> <p>23 contracts that Mr. Fried attempted to 11:51:12</p> <p>24 secure but didn't in New York City? 11:51:14</p> <p>25 A. Nothing is coming to mind that I 11:51:18</p>	<p style="text-align: right;">89</p> <p>1 DICARLO</p> <p>2 office? 11:52:18</p> <p>3 A. Yes. She had said she used to 11:52:19</p> <p>4 work in the New York office prior to the 11:52:22</p> <p>5 Westport office -- office opening in I 11:52:25</p> <p>6 believe in 2003. 11:52:27</p> <p>7 Q. Okay. Is the Westport office 11:52:29</p> <p>8 currently open? 11:52:31</p> <p>9 A. Yes. 11:52:32</p> <p>10 Q. And how long is it going to 11:52:33</p> <p>11 remain open for? 11:52:35</p> <p>12 A. The lease expires at the end of 11:52:36</p> <p>13 August 2011 at which point we will vacate. 11:52:38</p> <p>14 Q. And -- and do you know where you 11:52:42</p> <p>15 are going? 11:52:43</p> <p>16 A. We don't have a new space these 11:52:44</p> <p>17 leased as of yet. 11:52:51</p> <p>18 Q. When does the lease 11:52:52</p> <p>19 expire -- I'm sorry? 11:52:54</p> <p>20 A. No, that is it. 11:52:55</p> <p>21 Q. When does the lease expire for 11:52:56</p> <p>22 the Westport office? 11:52:58</p> <p>23 A. End of August 2011. 11:52:59</p> <p>24 Q. And you mentioned we. Who else 11:53:01</p> <p>25 is there? 11:53:03</p>

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<p>1 DICARLO</p> <p>2 A. Associate counsel Tom Cullen and 11:53:04</p> <p>3 paralegal Jeannie Naggy. 11:53:06</p> <p>4 Q. Is there a discussion about you 11:53:08</p> <p>5 and your team moving to the Milford 11:53:09</p> <p>6 office? 11:53:12</p> <p>7 A. There has been some discussion 11:53:12</p> <p>8 of that, but that is not going to happen. 11:53:13</p> <p>9 Q. Why not? 11:53:16</p> <p>10 A. It is not a very conducive 11:53:17</p> <p>11 environment to the type of work we do. 11:53:24</p> <p>12 Q. Okay. Is there any discussion 11:53:26</p> <p>13 about renting a suite? 11:53:28</p> <p>14 A. There is discussion about 11:53:31</p> <p>15 renting a smaller space for the three of 11:53:33</p> <p>16 us. 11:53:35</p> <p>17 Q. Okay. 11:53:35</p> <p>18 A. Somewhere in the Connecticut 11:53:36</p> <p>19 area, yes. 11:53:37</p> <p>20 Q. Do you know what Ms. Dembin's 11:53:38</p> <p>21 job title was? 11:53:43</p> <p>22 A. I -- I am not sure, no. 11:53:44</p> <p>23 Q. Do you know what she did? 11:53:48</p> <p>24 A. She processed bond requests, 11:53:49</p> <p>25 insurance certificate requests. She had 11:53:57</p>	<p>1 DICARLO</p> <p>2 contract and the whole request as a whole 11:55:14</p> <p>3 to me, so that I could review the 11:55:16</p> <p>4 contract. So, you know, to the extent 11:55:24</p> <p>5 that she had to deal with that, there was, 11:55:26</p> <p>6 you know, no issues with it. 11:55:28</p> <p>7 Q. Now, did there come a time when 11:55:30</p> <p>8 Ms. Dembin was terminated? 11:55:32</p> <p>9 A. Yes. 11:55:34</p> <p>10 Q. Do you recall when that was? 11:55:34</p> <p>11 A. I believe her last day was 11:55:35</p> <p>12 January 14 of 2011. 11:55:38</p> <p>13 Q. Do you know why she was 11:55:41</p> <p>14 terminated? 11:55:42</p> <p>15 A. She was terminated as part of a 11:55:43</p> <p>16 reduction in force with four or five other 11:55:45</p> <p>17 people people in the Westport office as 11:55:52</p> <p>18 well as a number of other people 11:55:54</p> <p>19 throughout the country. 11:55:57</p> <p>20 Q. Now, other than Ms. Dembin, do 11:55:57</p> <p>21 you know the names of those people that 11:56:01</p> <p>22 were terminated -- that were part of the 11:56:02</p> <p>23 reduction in force at the Westport office? 11:56:05</p> <p>24 A. At the Westport office? 11:56:07</p> <p>25 Q. Yes. 11:56:09</p>
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<p>1 DICARLO</p> <p>2 some involvement with travel, and I 11:54:02</p> <p>3 don't -- I am not sure exactly what her 11:54:06</p> <p>4 duties were with respect to it, but I know 11:54:08</p> <p>5 she had some involvement with it, and she 11:54:09</p> <p>6 handled meeting planning when -- whenever 11:54:15</p> <p>7 there was a need for a significant 11:54:18</p> <p>8 meeting, management meetings. 11:54:21</p> <p>9 Q. Okay. Do you know who she 11:54:23</p> <p>10 reported to? 11:54:30</p> <p>11 A. I understood it to be Burt Fried 11:54:31</p> <p>12 just based on what I saw, but I've never 11:54:34</p> <p>13 heard one way or the other who she 11:54:38</p> <p>14 reported to while Burt was there. 11:54:40</p> <p>15 Q. And do you have any personal 11:54:42</p> <p>16 knowledge about the quality of her work? 11:54:47</p> <p>17 A. Not really, no. 11:54:48</p> <p>18 Q. What do you mean by "not 11:54:55</p> <p>19 really"? 11:54:57</p> <p>20 A. Well, my involvement with her 11:54:57</p> <p>21 really was just relating to the bond 11:55:02</p> <p>22 requests. So a bond request would come 11:55:04</p> <p>23 in. She would gather the information out 11:55:06</p> <p>24 of the package that came to get it to the 11:55:08</p> <p>25 broker, and then she would route the 11:55:11</p>	<p>1 DICARLO</p> <p>2 A. Yes, I do. 11:56:09</p> <p>3 Q. Can you give me their names? 11:56:10</p> <p>4 A. Sure. It was Robin Keller, 11:56:11</p> <p>5 Kristin Braun, Peggy Craemer, Marcy Juran. 11:56:16</p> <p>6 I think that is it. 11:56:35</p> <p>7 Q. And do you know what Marcy 11:56:36</p> <p>8 Juran's job title was? 11:56:37</p> <p>9 A. I don't know her title, but she 11:56:40</p> <p>10 was marketing. 11:56:41</p> <p>11 Q. And do you know what Ms. Peggy 11:56:42</p> <p>12 Craemer's job title was? 11:56:48</p> <p>13 A. No, but again marketing. 11:56:50</p> <p>14 Q. How about Robin Keller? 11:56:52</p> <p>15 A. Receptionist and also -- well 11:56:53</p> <p>16 her title was receptionist. 11:56:57</p> <p>17 Q. Did she do any marketing? 11:57:00</p> <p>18 A. No, she was Shari Dembin's 11:57:01</p> <p>19 backup when Shari was not in the office to 11:57:04</p> <p>20 do, you know, bond requests and insurance 11:57:07</p> <p>21 requests in Shari's absence. 11:57:09</p> <p>22 Q. And Kristin Braun, do you know 11:57:11</p> <p>23 what her job title was? 11:57:13</p> <p>24 A. She was also marketing. 11:57:15</p> <p>25 Q. Okay. And were there any other 11:57:17</p>

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